

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Wenatchee School District

Docket No. 09-2023-OSPI-02053

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER**

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2023-SE-0162

A due process hearing was held before Administrative Law Judge (ALJ) L'Nayim Shuman-Austin on February 19, 20, 21, 24, March 5, and May 14 2025, via zoom videoconference. The Parents of the Student whose education is at issue¹ appeared and were represented by Shannon McMinimee, attorney at law. The Wenatchee School District (District) was represented by Susan Winkelman, attorney at law. Also present for the District was Janise Wertz, Special Education Director. Tamra Harrison, Rule 6 Law Clerk, observed the hearing at the invitation of the Parents.

STATEMENT OF THE CASE

Procedural History

The Parent filed a due process hearing request (Complaint) on September 18, 2023. The matter was assigned to ALJ Donald Dowie on September 20, 2023. A prehearing conference was held on October 6, 2023, and the hearing was set for March 4-8, 2024. On February 22, 2024, after the parties requested a settlement conference, the hearing was continued and a prehearing set for March 15, 2024. A prehearing conference was held on March 15, 2024, and the hearing was scheduled for September 10-13, and September 16, 2024.

On July 30, 2024, the matter was reassigned to ALJ Jill H. Brown, and prehearing conferences were scheduled for August 8, 2024 and August 15, 2024. On August 8, 2024, the Parent filed an amended complaint. A prehearing conference was held on August 15, 2024, and the hearing was scheduled for February 18-21, and

¹ To ensure confidentiality, names of parents and students are not used.

February 24, 2025. On December 6, 2024, the Parents filed a second amended complaint. A prehearing conference was held on January 16, 2025, and a fifth prehearing order was issued the same day. On February 12, 2025, the matter was reassigned to ALJ L’Nayim Shuman-Austin.

The due process hearing commenced one day late, due to illness of the ALJ. The hearing was held on February 19, 20, 21, and 24, 2025. Additional hearing dates were scheduled and held on March 5 and May 14, 2025.

Due Date for Written Decision

The due date for a written decision in this matter is August 13, 2025.

EVIDENCE RELIED UPON

Exhibits Admitted:²

District’s Exhibits: D1-D50, D52-D58

Parents’ Exhibits: P2-P6, P9, P18-P22, P24, P26, P30-P32, P41-P43, P47, P50-P52, P58-P61, P62p1, P64-P71, P73, P76³

Witnesses Heard:

Lindsay Brewer, District Occupational Therapist

Hanna Sherer (né Gustafsson), District Physical Therapist

² On February 13, 2025, the Parents filed a Motion in Limine requesting that the undersigned ALJ exclude the Districts’ proposed exhibits for the due process hearing set to begin February 18, 2025, because the District failed to comply with a prior prehearing order setting a deadline for the parties to exchange copies of proposed exhibits by 5:00 a.m. on February 10, 2025. The District did not exchange their proposed exhibits with counsel for the Parents until February 11, 2025, at 8:49 a.m. See Declaration of Shannon McMinimee in support of Parent’s Motion in Limine. The Parents proposed the remedy of relying solely on the Parents’ exhibits, as many were duplicative of the District exhibits. The undersigned ALJ offered the Parents the remedy of beginning the hearing a day later, on February 19, 2025, to comport with 5-day rule. Washington Administrative Code (WAC) 392-172A-05100(1)(c). The Parents declined this remedy, and the ALJ determined the hearing would start as scheduled. The hearing thereafter commenced a day late due to unforeseen illness of the ALJ.

³ Exhibits are cited by party (“P” for Parents; “D” for District), exhibit number, and page number. For example, a citation to P1 at 5 is to the Parent’s Exhibit 1 at page 5. The hearing transcript is cited as “Tr.” with references to the page of the cited testimony. For example, a citation to Tr. 80 refers to testimony at page 80 of the transcript.

The Student's Father (Father)

The Student's Mother (Mother)

Janise Wertz, District Special Education Program Director

Trisha Craig, District School Psychologist (former Special Education Director for the District)

Lorinda "Rindy" Eakle, District Special Education Coordinator (former District Board Certified Behavior Analyst (BCBA))

Renee Roy Hill, M.S. CCC/SLP, CLC, COM, Crossroads Therapy Clinic

Dr. Lionel Enns, Ph. D., BCBA-D, NCSP, Under One Roof Psychological Services

Risca Solomon, BCBA, Skybound Therapies Ltd.

Sarah Denison, BCBA, Skybound Therapies Ltd.

Audrey Dorshimer, District Physical Therapist

Alex Ortega, District Speech Language Pathologist

ISSUES/REMEDIES

1. The issues heard in the due process hearing, as identified in the January 16, 2025, Fifth Prehearing Order are:

- a. Whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) by:
 - i. Failing to provide the Student with FAPE from September 18, 2021, until July 20, 2022, by failing to provide him with an educational placement;
 - ii. Failing to complete a new behavioral improvement plan (BIP) after Dr. Enns completed a new functional behavioral assessment (FBA) for the Student for the District in January 2022 through the implementation of a new BIP for the Student at Bancroft;
 - iii. Failing to provide the Student with FAPE from July 20, 2022, to present by not having individualized education programs (IEP) and IEP amendments in place for the Student that included all of the related

services and supplementary aids and services he needs in order to make meaningful progress, including sufficient related services in Speech Language Pathology, Occupational Therapy, Physical Therapy, and Behavior (to include the specific amount of Applied Behavior Analysis (ABA) services to be provided to the Student by a Registered Behavior Technician (RBT) and services to be provided by a Board Certified Behavior Analyst (BCBA)), along with related services in Parent Counseling and Training as identified in the Student's most recent reevaluation as well as related services in recreation as the Student needs therapeutic recreation and access to recreation programs given that he has been removed from the ability to access any of the same within the District and his home community; all of the supplementary aids and services he needs, including transportation to allow for the Student have visits home from his residential placement prior to his most recent IEP; and the Support for School Personnel that the staff working with the Student needed in order to be able to ensure that they are offering him FAPE, including appropriate training from qualified providers in aspects of the Student's disabilities as necessary;

- iv. Failing to provide the Student with FAPE from July 20, 2022, to present by not ensuring that the Student received all of the special education services called for in his IEPs and IEP amendments;
- v. Failing to provide the Student with FAPE from March 11, 2024, to present by not ensuring that the Student received all of the specially designed instruction from a special education teacher called for in his IEP;
- vi. Failing, since July 1, 2023, to have the Student in an educational placement that is able to meet his unique needs in his least restrictive setting;
- vii. Failing, since July 1, 2023, to allow for meaningful parental participation in the process of seeking a new residential educational facility for the Student that is able to meet his unique needs in his least restrictive setting;

b. Whether the District violated the procedural requirements of the IDEA and in turn denied the Student with FAPE by:

- i. Failing to provide educational records when requested in advance of an IEP meeting and in any instance within 45 days, including prior to the January 18, 2022 multidisciplinary and IEP team meeting; the February 2, 16, and 25, April 15, July 8, August 16, September 13, and October 11, 2022 IEP team meetings; the February 1, May 30, June 6, and September 12, 2023 IEP team meetings; and after the filing of the initial due process hearing request on September 18, 2023;
- ii. Failing to conduct a reevaluation before materially and substantially changing the Student's educational placement in the fall of 2021;
- iii. Failing to conduct an FBA and BIP before materially and substantially changing the Student's educational placement in the fall of 2021 because of behavioral challenges;
- iv. Failing to document its material and substantial change in the Student's educational placement in the fall of 2021 through an IEP Amendment;
- v. Failing to issue Prior Written Notices before material and substantial changes to the Student's educational placement from September 18, 2021 to present, specifically when the Student's time at Discovery Behavior Solutions (DBS) was reduced, when DBS stopped providing any services to the Student at all, when the District ceased providing any occupational therapy (OT) and physical therapy (PT) services once the Student was no longer at DBS, when the District reduced the provision of speech/language pathologist (SLP) services once the Student was no longer at DBS, when the Student was at home receiving no services at all from the District, when the District offered services to the Student at one of its facilities rather than at a residential educational placement in the spring of 2023, when the Student began at Lindens, and then when the Student was moved to the Bancroft School;
- vi. Failing to issue Prior Written Notices that document the reasons that it has denied requests from the Parents related to the provision of FAPE to the Student from September 18, 2021 to present, including each time that the Parents asked for an appropriate educational placement for the Student; each time that the Parents asked the District to complete reevaluation report that reflects the decisions the

multidisciplinary made in January of 2022; each time that the Parents asked for the District to implement an IEP for the Student that included all of the services that the January 2022 reevaluation identified he needs; each time that the Parents asked for the District to provide all of the SLP, OT, and PT services its reevaluation identified that the Student needs even if doing so required the District to contract with additional providers beyond Bancroft and Ms. Hill; each time that the Parents asked for the District to include the related service of Parent Counseling and Training in the Student's IEP; each time that the Parents asked the District to include specific amount of ABA services to be provided to the Student by a BCBA, along with related services in Parent Counseling and Training as identified in the Student's most recent reevaluation; each time the Parents asked for all of the supplementary aids and services the Student needs, including transportation to allow for the Student have visits home from his residential placement; each time the Parents asked for Support for School Personnel that the staff working with the Student need in order to be able to ensure that they are offering him FAPE, including appropriate training from qualified providers in aspects of the Student's disabilities as necessary; each time the Parents requested that the District fund the Student's participation in related services in recreation, including therapeutic recreation and providing him with access to recreation programs given that he has been removed from the ability to access any of the same within the District and his home community; each time the District implemented an IEP for the Student that identified that he required dedicated support but did not ensure that the same was provided; each time the Parents requested that the District fund their participation in visits to prospective alternative residential placements to help facilitate procuring the same; each time the Parents requested that the District seek additional support in procuring residential placements as the District lacks experience in doing the same; and each time the Parents requested that the District have a representative conduct a site visit to observe the Student at Lindens and The Bancroft School;

- vii. Failing to properly complete a reevaluation report that reflects the decisions the multidisciplinary made in January of 2022, including ensuring that the team's decisions with respect to qualifying category and recommendations for areas of the provision of special

education services were reflected in the reevaluation report and that all reports that were completed as part of the January 2022 reevaluation were included in the same;

viii. Failing to include the Parents in the process of drafting new FBAs and BIPs since the Student has been at Bancroft; and

ix. Failing to ensure that the Student's IEP reflects all of the special education services that the Student has received from September 18, 2021 to present, including all of the services that the Student and his Parents have received, to include all of the ABA services that the Student has been provided and all of the Parent Counseling and Training that the Student has received.

c. Whether the District is responsible for the costs associated with the Student's receipt of medical care as part of his receipt of FAPE from July 20, 2023, as the District's inability to provide an appropriate educational placement for the Student within Washington has resulted in his inability to access medical care through the Washington Department of Health and Social Services while also being ineligible to access medical care through the State of New Jersey.

d. And, whether the Parents are entitled to their requested remedies:

i. Declaratory relief finding that the District violated the IDEA and that the Student was denied FAPE as a result of the District's actions;

ii. Compensatory education and related services for the Student to allow him to obtain the educational benefit that he would have received but not for the District's violations of the IDEA and denial of FAPE;

iii. Reimbursement of any costs the Parents have and will incur providing the Student with educational services (to include related services) in absence of the District providing FAPE;

iv. Reimbursement of any costs the Parents have incurred in their efforts to secure a new educational placement for the Student that is able to meet his unique needs in his least restrictive setting;

v. Reimbursement of any costs the Parents have and will incur only because the District has elected to serve the Student outside the

State of Washington, including out-of-pocket medical costs incurred only because the Student is no longer in Washington because the District was not able to provide him FAPE within the state;

- vi. An Order requiring the District to:
 - a. Amend the January 2022 reevaluation report to accurately reflect the decisions the multidisciplinary made in January of 2022 and to attach all reports that were completed as part of the same;
 - b. Timely complete a triennial special education eligibility reevaluation of the Student that is commensurate in scope to the January 2022 reevaluation and that includes assessments as necessary to determine the nature and extent of the special education and related services that the Student needs, including such developmental, corrective, and other supportive services as are required to assist the Student to benefit from special education services, including but not limited to speech-language pathology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, counseling services, including rehabilitation counseling, behavioral services, medical services for diagnostic or evaluation purposes, school health services and school nurse services, social work services in schools, and parent counseling and training. Given the Student's age and known significant needs, evaluation activities in the area of transition services should be undertaken as part of this reevaluation;
 - c. Produce all educational records to the Parents in a timely manner moving forward;
 - d. Amend the Student's IEP to ensure that it:
 - i. Calls for all of the related services that he needs in order to be able to make educational progress given his unique needs, including sufficient related services in SLP, OT, PT, and Behavior (to include the specific amount of ABA services to be provided to the RBT and services to be provided by a BCBA) as well as related services in Parent Counseling and Training as identified in the Student's most recent reevaluation;

- ii. Calls for all of the supplementary aids and services he needs, including transportation to allow for the Student have visits home from his residential placement; and
 - iii. The Support for School Personnel that the staff working with the Student need in order to be able to ensure that they are offering him FAPE, including appropriate training from qualified providers in aspects of the Student's disabilities as necessary; and
- e. Continue to provide the Student with an educational placement at the New England Center for Children and to the extent necessary to ensure that the Student's unique needs are met, contract with other providers to ensure that he receives all of the communication, occupational therapy, and physical therapy services that he needs;
- f. Fund all of the costs associated with the Student being served out of-state because it cannot over him FAPE in Washington, including out-of-pocket medical costs that exist only because the District has removed the Student from Washington where there were no such costs;
- vii. Or other equitable remedies, as appropriate.

FINDINGS OF FACT

In making these Findings of Fact, the logical consistency, persuasiveness and plausibility of the evidence has been considered and weighed. To the extent a Finding of Fact adopts one version of a matter on which the evidence is in conflict, the evidence adopted has been determined more credible than the conflicting evidence. A more detailed analysis of credibility and weight of the evidence may be discussed regarding specific facts at issue.

Some of the evidence presented was hearsay, which is a statement made outside of the hearing used to prove the truth of what is in the statement. In administrative hearings, hearsay evidence is admissible if, in the judgment of the presiding officer, "it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." Revised Code of Washington (RCW) 34.05.452(1). An ALJ may not base a finding of fact exclusively on hearsay evidence unless the ALJ determines that doing so "would not unduly abridge the parties'

opportunities to confront witnesses and rebut evidence.” RCW 34.05.461(4). To the extent any findings of fact are based on hearsay, it is determined that such findings did not unduly abridge the parties’ opportunity to confront witnesses and rebut evidence.

The Student

1. The Student is [REDACTED] as of the date of the hearing. D6 at 1. The District initially qualified the Student for special education services at age three under the “Developmentally Delayed” category. D1 at 3; D6 at 3. Cognitive testing reflected the Student’s intellectual abilities fell within the 1st percentile. D6 at 4. The Student was diagnosed with Autism Spectrum Disorder (ASD) at age four, [REDACTED] at age five, and anxiety disorder at age six. D6 at 3.

2. In 2016 and 2018, the Student was diagnosed with apraxia and dysarthria. Tr. 467-468 (Hill); Tr. 1170-1171 (Father). The Student’s apraxia impacts his planning and processing speech neurologically. The Student’s dysarthria impacts how his mouth muscles work in speech, and he requires exercises to develop muscle tone in his jaw, lips, cheeks and tongue. Tr. 470-471 (Hill); Tr 1163-1164 (Father).

3. In 2017, the Student qualified for special education services under the category of “Health Impairments,” and received specially designed instruction (SDI) in all academic areas, including social, emotional and adaptive skills, and related services in gross and fine motor and communication. *Id.*

Background and History

4. In January 2019, the Parents placed the Student at Discovery Behavior Solutions (DBS), a local Applied Behavior Analysis (ABA) private day clinic located in Washington State. D6 at 3, 4, 15; D1 at 10. The Parents thereafter contacted Renee Hill,⁴ a private speech language pathologist (SLP) who provided speech therapy and

⁴ Ms. Hill, M.S., CCP-SLP, is a licensed Speech and Language Pathologist with a Certificate of Clinical Pathologist and has worked almost 25 years with clients who have motor speech and feeding issues. P64; Tr. 464-466 (Hill). During her postgraduate training, Ms. Hill completed courses and became a trained therapist and teacher with TalkTools, a motor-based approach for speech therapy which includes myofunctional and feeding therapy. Tr. 465-466 (Hill). She also completed training in working with kids with apraxia and dysarthria, and teaches courses in these areas. *Id.* Ms. Hill currently resides in Texas and has her own clinic specializing in clients with muscle-based speech and feeding problems ranging from children who are tongue-tied to children who have multiple motor impairments, educational impairments, and cognitive impairments. *Id.*

oral motor therapy to the Student. Tr. 469 (Hill); Tr. 1172-1173 (Father). Ms. Hill also trained an RBT at DBS to assist with daily teletherapy. Tr. 471-472 (Hill).

5. Sometime after 2019, the District contracted with DBS to provide the Student's special education and related gross and fine motor and communication services. D6 at 3, 4, 15; D1 at 10; Tr. 208 (Sherer); Tr. 260-261 (Father); Tr. 364 (Eakle); Tr. 625 (Wertz). The District also contracted with Ms. Hill to provide the Student with teletherapy speech therapy services in conjunction with an SLP at DBS. Tr. 208 (Sherer); Tr. 385-386 (Eakle); Tr. 625 (Wertz); Tr. 847 (Craig). The Student attended DBS until December 3, 2021. D41 at 45; P43.

6. Between July 22, 2022 and November 16, 2024, the District contracted with the Lindens Neurobehavioral Program (Lindens), a residential treatment facility located at the Bancroft School (Bancroft), a residential school in New Jersey, to provide special education and related gross and fine motor and communication services to the Student. D18; D56; Tr. 286-287, 316 (Father); Tr. 1035-1036 (Wertz); Tr. 366 (Eakle). The District also contracted with Ms. Hill to provide remote SLP services to the Student while he resided at Lindens, and when he later transitioned to the school at Bancroft until September 4, 2024. D38 at 2; Tr. 385-386 (Eakle); Tr. 496-496-498, 500 (Hill); Tr. 911-912 (Craig); Tr. 987-988 (Wertz); Tr. 316 (Father).

7. On or around November 16, 2024, the Student discharged from Bancroft and transferred to a residential treatment center (RTC) at New England Center for Children (NECC) in Massachusetts where he currently resides. D56 at 10; P60 at 9; Tr. 321 (Father); Tr. 992 (Wertz). The District has contracted with NECC to provide special education and related gross and fine motor and communication services to the Student. *Id.*

2021-2022 School Year (DBS)

June 2021 IEP

8. On June 23, 2021, the IEP team met to review the Student's Individualized Education Plan (IEP). D1. The Student was then nearly [REDACTED], and would be enrolled in sixth grade at DBS as his IEP placement D1 at 3; D6 at 1. Attendees included the Parents; Ms. Hill; Mayra Hurtado (DBS Board Certified Behavior Analyst (BCBA)); Andie "Andrea" Villines (DBS Regional Director); and Carla-Marie Meyers (DBS Chief Executive Officer (CEO)). D1 at 3; P42 at 1, 6, 10; Tr. 208 (Sherer). Prior to the meeting, the family also met with Lindsay Brewer (District occupational therapist (OT)),

and Hanna Sherer, né Gustafsson (District physical therapist (PT)), to review IEP goals. D1 at 6.

9. An IEP was developed for the Student for the period of June 29, 2021 through June 28, 2022 (June 2021 IEP). D1. The IEP included eight communication goals, nine social/emotional goals; four adaptive/self-help goals; three gross motor goals; three fine motor goals; five math goals; nine reading goals; and one written expression goal. D1 at 10-21, 27-31. The IEP indicated that the Student would receive all SDI and related services at DBS as his least restrictive environment (LRE). D1 at 37. The IEP further indicated that all of the Student's SDI and related services would be monitored by the District. *Id.*

10. The June 2021 IEP special education and related services matrix provided the Student with the following special education services and related services:

Services 06/29/2021 - 06/28/2022

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Gross Motor	PT	PT	60 Minutes / 1 Times Weekly	Special Education	06/29/2021	06/28/2022
No	Fine Motor	OT Staff	OT	75 Minutes / 1 Times Weekly	Special Education	06/29/2021	06/28/2022
No	Communication	SLP	SLP	330 Minutes / 1 Times Weekly	Special Education	06/29/2021	06/28/2022
Special Education							
No	Social/Emotional	Special Education Staff	Special Education Teacher	87 Minutes / 1 Times Daily	Special Education	06/29/2021	06/28/2022
No	Adaptive/Self Help	Special Education Staff	Special Education Teacher	75 Minutes / 1 Times Daily	Special Education	06/29/2021	06/28/2022
No	Math	Special Education Staff	Special Education Teacher	40 Minutes / 1 Times Daily	Special Education	06/29/2021	06/28/2022
No	Reading	Special Education Staff	Special Education Teacher	50 Minutes / 1 Times Daily	Special Education	06/29/2021	06/28/2022
No	Written Expression	Special Education Staff	Special Education Teacher	15 Minutes / 1 Times Daily	Special Education	06/29/2021	06/28/2022

Total minutes per week student spends in school:

1800 minutes per week

Total minutes per week student is served in a special education setting:

1800 minutes per week

Percent of time in general education setting:

0% in General Education Setting

D1 at 36-37.

11. The IEP also provided the following supplementary aids and services, to be provided at DBS:

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Yes	Dedicated Aide	1:1 Support	Special Education Teacher	360 Minutes / 1 Times Daily	Special Education	06/29/2021	06/28/2022
Yes	Supervision	Support Staff	BCBA	540 Minutes / 1 Times Weekly	Special Education	06/29/2021	06/28/2022
No	Consultation	Neurological developmental team member	Special Education Teacher	60 Minutes / 1 Times Yearly	Special Education	06/29/2021	06/28/2022

D1 at 36-37. The LRE placement option statement further provided: “[t]here may be variation on [Student’s] service matrix due the variability of his schedule at DBS due to behavior, instructional programming, preference assessments, etc.” D1 at 37. A prior written notice (PWN) dated June 13, 2021, indicated that the IEP would be initiated on June 29, 2021. D1 at 39.

July/August 2021 - DBS Skill-Based Treatment (SBT)

12. Sometime in July 2021, DBS initiated Skill-Based Treatment (SBT) in response to increasing Student negative behaviors, with a goal of focusing on functional communication. D3 at 3; P3 at 13; Tr. 341-342 (Eakle).

13. On or around August 24, 2021, the Parents worked with the Student’s psychiatrist to reduce his dose of [REDACTED] D2 at 3; P41. The Student’s behavior improved at home with his Parents, but declined at DBS. *Id.* See also, D39; P42; D40; D57; D58.

September 2021 – DBS Incident

14. Ms. Brewer⁵ provided in-person OT services at DBS at the beginning of the 2021-2022 school year and would leave activities for the Student to complete with DBS staff when she was not present. Tr. 116-117 (Brewer). Sometime in mid-September 2021, DBS staff stopped practicing OT skills due to the Student’s behaviors. *Id.* Ms. Sherer⁶ also provided PT services to the Student at DBS in early

⁵ Ms. Brewer is a District OT serving kindergarten through fifth grade students, and holds a Master’s in Occupational Therapy. Tr. 63 (Brewer). She has worked for the District since 2016. *Id.*

⁶ Ms. Sherer began working as a District PT since 2019. Tr. 183 (Sherer). She holds a Bachelor’s in Exercise Science and Neuroscience, a Doctorate in Physical Therapy, is certified as a lymphedema therapist, has an Educational Staff Associate (ESA) certificate, and has worked as a PT since 2017 in medical facilities. *Id.*

September 2021, but his behavior soon regressed, limiting his opportunities to engage in PT. Tr. 189 (Sherer).

15. On Wednesday, September 1, 2021, soon after drop-off at DBS, the Student engaged in aggressive behavior toward a DBS behavior technician (BT), Jorge Garcia. P42 at 1-2. The Student hit Mr. Garcia, and then engaged in forceful head banging on a glass door. *Id.* The BCBA, Ms. Hurtado, and Mr. Garcia placed the Student in a two-person stability hold until the Student calmed down. *Id.*

16. The Student was away from DBS on vacation between Monday, September 20 and Monday, September 27, 2021. D39 at 2-3, 8. On September 22, 2021, Ms. Brewer and Ms. Sherer met with Ms. Hurtado to discuss the SBT protocols for the Student, and the need for increased safety care. D39 at 2-3; D57 at 8; D58 at 6-7. Meeting notes indicated “[h]e is trying to come off Abilifi since 5 year [sic] old.” D57 at 8.

17. Between Monday, September 27, 2021 and Thursday, September 30, 2021, the Student attended DBS each day from approximately 8:00am to approximately 3:00pm, and received between 7 and 9 hours per day of direct services from both a BCBA and BT, including the implementation of the SBT plan. D39 at 2-6, 45-108. There were no safety incidents during this period of time. P42 at 3-4; D39 at 138-144.

18. On Monday, September 27, 2021, Ms. Hurtado assisted Ms. Brewer with SBT, and the Student successfully completed OT exercises and also appropriately engaged with the RBT. D57 at 8; D39 at 2-3. The Student engaged in no aggression during this session. *Id.* On Tuesday, September 28, 2021, Ms. Sherer conducted a gross motor session with the Student, Ms. Hurtado and 2 RBTs. D58 at 6. The Student engaged in no aggression during this session. *Id.*

October 2021 – DBS Incident and IEP Meeting

19. The Student typically attended DBS 6 hours a day Monday through Friday. D39; P42. Between Friday, October 1, 2021 and Tuesday, October 5, 2021, the Student attended DBS each day from approximately 8:00am to 3:00pm, and received between 6 and 8 hours per day of direct BCBA and BT services. D39 at 6-8, 109-137. There were no safety incidents during this period of time. P42 at 3-4; D39 at 138-144.

20. On Wednesday, October 6, 2021, soon after drop off at DBS, the Student attempted to enter a room with a broken window. P42 at 3-4; D39 at 138-144. A BT denied the Student access to the room, and the Student began exhibiting aggressive behavior toward the BT and the BCBA, Ms. Hurtado. *Id.* The Student engaged in hair pulling, throwing objects at staff, using blunt objects as weapons, and broke a window

after hitting it with his two arms. *Id.* Staff used a two-person stability hold and a floor hold to restrain the Student. *Id.* The Student suffered bleeding injuries to his left pinky and right elbow. *Id.* DBS records reflect that the Student remained at the clinic between 8:00am and 10:25am, and received 4.45 hours of direct services from both a BCBA and BT. *Id.*

21. Between Wednesday, October 6, 2021 and Thursday, October 14, 2021, the Student remained home and received no direct BCBA or BT services. P30 at 4; D39 at 9-10, 145-146; D57 at 7. The Student missed a scheduled PT visit with Ms. Sherer on Monday, October 11, 2021. D58 at 5. That same day, the DBS BCBA team met to discuss the Student's behavioral skills training. D39 at 146.

22. On Friday, October 15, 2021, the District held an IEP team meeting to address the Student's recent behavioral challenges. D2; P30. Attendees included the Parents; Ms. Villines (DBS Regional Director); Ms. Hurtado (DBS BCBA); Ms. Brewer (District OT); Ms. Sherer (District PT); and Ms. Bibby (former District Assistant Director of Special Education). D2; D57 at 7; D58 at 5. The Parents acknowledge that they attended this meeting and provided input. D2, at 3; P30, at 3; Tr. 262-263 (Father). Ms. Bibby sent the Parents a PWN for the meeting and created meeting notes. D2 at 3; Tr. 779-780 (Craig).

23. The Parents reported the Student's medication was reduced in August 2021, after which the Student's behavior significantly improved at home but declined at DBS. D2 at 3; D57 at 7. The PWN indicated that sometime in September 2021, after DBS initiated SBT, the Student also began to struggle with OT and PT sessions and his behavior management needs increased. D2 at 3-4. The PWN noted that the Student was out of school from October 6, 2021 through October 14, 2021, and that the Student was only attending DBS about an hour. P30 at 4. The PWN noted that the District planned to conduct a Practical Functional Assessment (PFA)⁷ starting October 18-20, 2021, and the IEP team would meet again. *Id.* After the meeting, the Parents received a copy of the PWN from Ms. Bibby. Tr. 263 (Father).

24. Between Monday, October 16, 2021, and Friday, October 29, 2021, the Student attended DBS on a reduced schedule during morning hours, and received 1-2 hours per day of direct BCBA and BT services, D40 at 1-5, 13-52. The Student also

⁷ A PFA is a protocol used to assess severe problem behaviors. D3 at 3-4; Tr. 341 (Eakle). A PFA assesses a student's behaviors across multiple environments, determines how challenging behaviors can be turned on or off by different types of interventions, and how the interventions can be reinforced to address the problem behaviors. See, D3 at 3-4; Tr.

received no in-person OT and PT services during this period of time. D57 at 6; D58 at 5. On October 22, 2021, Ms. Sherer and Ms. Brewer met with the District assistant special education director to discuss ideas of how to support the Student after he returned to DBS full-time. *Id.* They also discussed that a PFA was completed that week, and that the IEP team planned to share the results at a follow-up meeting. *Id.*

November 2021 – IEP Meeting and DBS Incident

25. Between Monday, November 1, 2021, and Friday, November 5, 2021, the Student continued to attend DBS on a reduced schedule during morning hours, and received 1-2 hours per day of direct BCBA and BT services. D40 at 5-7, 53-80. The Student received no in-person OT and PT services during this period of time. D57 at 5; D58 at 4-5.

26. On November 5, 2021, the District held another IEP team meeting to address the Student's recent behavioral challenges. D3; P31. Attendees included the Parents, Rindy Eakle⁸ (District BCBA); Ms. Villines (DBS Regional Director); Ms. Bibby (former District Assistant Director of Special Education); Trisha Craig (former District Special Education Director); and Mayra Hurtado (DBS BCBA). D3 at 1. The Parents did not recall when they received a copy of the IEP team meeting notice or the PWN for the meeting, but acknowledged that they attended most IEP meetings. Tr. 263-265 (Father).

27. Ms. Eakle expressed concern that SBT was started prior to conducting an PFA, as it is a protocol reserved for severe behavior problems, and expressed the importance of ensuring that the supervising BCBA have PFA/SBT training. D3 at 4; Tr. 341-342 (Eakle). See also, D4 at 2. The Parents also expressed that all staff working

⁸ Ms. Eakle is a Board Certified Behavior Analyst (BCBA). At the time of the November 5, 2021, IEP Meeting, Ms. Eakle was not yet certified as a BCBA. Ms. Eakle has served as the District elementary special education coordinator for the past 2 years, previously served as a District BCBA for 3 years, and as a special education teacher for 14 years. Ms. Eakle received an Associate of Arts from Wenatchee Valley College, a Bachelors' in K-8 special education at Eastern Washington University, and attended Arizona State University to obtain education as a behavior analyst. In her prior role as a behavior analyst, Ms. Eakle made observations of students exhibiting maladaptive behaviors, completed a functional behavior assessment (FBA), collaborate with the school team and parents to develop a Behavioral Intervention Plan (BIP) as well as Emergency Response Plans (ERPs) if needed, and teach staff how to implement the plans with fidelity. In her current role as the District elementary special education coordinator, Ms. Eakle works closely with teachers and District behavior analysts on supporting students, including working on curriculum access, modifications, accommodations, supporting and writing BIPs, setting up data systems, ensuring that materials are available to teachers and students, working with families, and attending IEP meetings and IEP evaluation meetings. Tr. 338-340 (Eakle).

with the Student should be experienced and trained in SBT and know the Student well. D3 at 3-4. See *also*, D4 at 2.

28. The PWN reflected that DBS started SBT in July 2021, in response to increasing Student behaviors and with a goal of focusing on functional communication, and that DBS also “unilaterally discontinued services defined in his IEP in order to run the SBT protocol.” D3 at 3. The PWN further indicated that DBS was unable to provide BCBA support greater than 2 hours per day. D3 at 4. See *also*, D4 at 1. The Student was currently onsite at DBS from 9:30am to 11:00am, and requesting to go home around 10:40am. D3 at 3.

29. DBS proposed a PFA plan to increase the Student’s time at DBS in 30 minute increments once he met success criteria of 3 consecutive sessions with no aggressive behaviors. D3 at 3. In response to the DBS proposal, the District proposed a reevaluation of the Student. D3 at 4. The Parents requested that the reevaluation be completed by the University of Washington Haring Center. *Id.* The PWN indicated that the District declined the request because the District had qualified staff to complete the reevaluation. *Id.*

30. Between Monday, November 8, 2021, and Friday, November 26, 2021, the Student continued to attend DBS on a reduced schedule during morning hours, and received only 1-2 hours per day of direct BCBA and BT services. D40 at 8-12, 81-126; D41 at 1-3, 7-30. The Student again received no in-person OT and PT services during this period of time. D57 at 5; D58 at 4. No safety incidents occurred during this period of time. D41 at 1-3, 7-31.

31. On Monday, November 29, 2021, the Student had not arrived by 9:30am, and Parents informed DBS staff that the Student had escalated while at a safety care training, and that his PT would drop him off at DBS. P42 at 5-6; D41 at 31. Ms. Hurtado recommended that the Student be fully deescalated before going into the car for drop off. *Id.* The Student arrived at DBS around 10:50am. *Id.* As Ms. Hurtado opened the door, the Student grabbed her, pulled her hair, and hit her. *Id.* A two-person hold was implemented for staff and Student safety. *Id.* Ms. Hurtado contacted Ms. Villines, DBS Regional Director, after the incident. *Id.* DBS records reflect the Student remained at the clinic between 10:40am and 11:34pm, and received 0.73 hours (43 minutes) hours of direct BCBA services. D41 at 3.

November 2021 – Notice of District Reevaluation

32. On November 12, 2021, the District gave the Parents a reevaluation notification/consent form indicating it proposed a reevaluation due to the increased severity of the Student's behaviors. D8 at 3. The consent form specified that the District would reevaluate the Student in the following areas: existing data, background information, student observation, medical-physical, cognitive, math, written language, reading, behavior, social/emotional, adaptive, communication, gross motor, and fine motor. D8 at 2-4.

33. The Parents received and signed the consent form on November 18, 2021, and added the areas of sensory processing, regulation, and vision to the areas for reevaluation. D8 at 3; D5 at 1; P32; Tr. 267 (Father). Parents indicated that they believed the Student required residential placement, and requested that the District consult with the University of Washington's Haring Center, and that Ms. Hill complete an oral motor assessment as part of the reevaluation. D5 at 2. The consent form did not indicate the Parents requested that the District evaluate the Student's recreational or therapeutic recreation needs. *Id.*

34. The District agreed to contract with Dr. Lionel Enns to complete the background information, observation, cognitive, social/emotional, and adaptive portions of the reevaluation. D6.

December 2021 – DBS Incident and Student Discharge

35. Between Tuesday, November 30, 2021, and Wednesday, December 2, 2021, the Student continued to attend DBS on a reduced schedule, receiving between 1.5 – 3.5 hours of direct BCBA and BT services. D41 at 3-5, 32-41. The Student received no in-person OT or PT services during this period of time. D57 at 5; D58 at 4. No safety incidents occurred during this period of time. D41 at 3-6, 32-47.

36. On Friday, December 3, 2021, during a session with the BT, the Student began grunting and punching his fist into his hand. P42 at 7-10; D41 at 5-6, 42-47. When Ms. Hurtado asked the Student if he had "gentle hands", the Student grabbed, hit and bit her on the upper left arm and shoulder area. *Id.* The Student also bruised and scratched the BT, Kyle West, on the hand and knuckles. A two-person hold was implemented on and off for approximately 20 minutes. *Id.* The Student then undressed and urinated on the floor. *Id.* DBS records reflect the Student remained at the clinic between 8:30am and 12:15pm, and received 4.17 hours (250 minutes) hours of direct BCBA and BT services. D41 at 5-6.

37. That same day, DBS informed the parents that it did not have the staffing, resources or environment to ensure the safety and well-being of the Student and the staff working with him. D41 at 45. The Parents informed DBS that they were looking into residential settings, but that a bed opening could take up to a year. *Id.* The Parents further communicated they understood why “DBS would rather discharge [Student] over losing Mayra (client’s BCBA) as an employee.” *Id.*

38. The Student did not attend DBS after December 3, 2021, and instead remained home with his Parents and younger brother. D41 at 45; P43; D57 at 4-5; D58 at 2-3; Tr. 1179 (Father). Both Parents are trained in de-escalation and safety-care techniques. Tr. 1162-1163 (Father). The Father is additionally trained in TalkTools speech therapy techniques, and assisted Ms. Hill in providing remote speech services to the Student while he remained home. Tr. 465-466 (Hill); Tr. 1171-1172 (Father).

39. Between December 4, 2021 and May 9, 2022, the Student remained at home with his Parents and younger brother, and received no IEP services. P5 at 2; Tr. 465-466 (Hill); Tr. 1171-1172, 1174 (Father). The Father provided in-person TalkTools motor therapy to the Student, and Ms. Hill provided remote SLP assistance. *Id.* It is not clear whether the District paid Ms. Hill for these services. *Id.* The District also did not provide the Student with continued OT or PT services during this period of time, and Ms. Brewer’s and Ms. Sherer’s progress notes simply indicate “Student Not Available.” D57 at 2-4; D58 at 1-3.

December 2021 Psychological Assessment

40. In December 2021, Dr. Enns⁹ completed both a psychological assessment (December 2021 Psychological Assessment) and a Functional Behavior Assessment (December 2021 FBA) for the Student. P3 at 23-62, 63-76; D6; D7; Tr. 507-508 (Enns).

⁹ Dr. Enns, BCBA-D, NCSP, is a licensed clinical child psychologist and board-certified behavior analyst, holds a Doctorate in School Psychology and a Bachelor of Arts in History, is a board certified Behavior Analyst Doctoral (BCBA-D) and is certified as a forensic evaluator. P65; Tr. 504 (Enns). Dr. Enns’ doctorate focused on assessment and intervention of Behavioral disorders, autism, counseling, parent education, and early childhood mental health. *Id.* Dr. Enns provides therapy for a few patients, but is trained to administer a wide batter of cognitive, academic, adaptive and social-emotional measures, and to supervise mental health professionals/BCBAs/ABA therapists. *Id.* He is a Child Psychologist, and the managing partner, at Under One Roof Psychological Services, in Seattle, Washington. P65; Tr. 503-506 (Enns). He previously worked for A.P.P.L.E. Consulting conducting autism assessments and neuropsychological and psycho-educational assessments, and using ABA methods to conduct therapy with children with autism. *Id.*

41. Dr. Enns conducted a clinical interview with the Parents; reviewed parent and teacher rating scales to the Behavioral Assessment System for Children, Third Edition (BASC-3); reviewed Parent responses to the Vineland Adaptive Behavior Scales, Third Edition (Vineland 3); interviewed Ms. Hurtado via telephone and visited DBS; interviewed District special education staff; and reviewed school and provider records. P3 at 23; D6 at 1; Tr. 507-508, 512-514 (Enns). Dr. Enns also reviewed a January 2019 note from Dr. De Lacy, the Student's provider at Seattle Children's Hospital, which recommended intensive ABA therapy due to escalating aggressive behaviors. D6 at 6.

42. Dr. Enns began his evaluation on December 4, 2021, and evaluated the Student in-person on December 16, 2021, with both parents and a respite caregiver, and observed a speech therapy session provided by the Father. P3 at 29-33; D6 at 7-11; Tr. 509-510 (Enns). Dr. Enns observed that the Student required constant interaction to redirect him away from unsafe and impulsive behaviors, including slapping his Mother on the buttocks several times, grabbing phones, opening the Mother's briefcase, pushing his Father into the garage, grabbing items from a counter, and grabbing a laptop from his Father. *Id.* Dr. Enns noted that both Parents, who are safety care trainers, were constantly on alert to keep the Student safe and redirect his actions. *Id.*; Tr. 510 (Enns). Dr. Enns noted that despite the Parents' training and hard work redirecting the Student, the Student was very physical with his mother and the Parents were strained. Tr. 510 (Enns).

43. The Student's Father reported that the Student's behavior had deteriorated in the past three months such that DBS was no longer able to serve him, and that the Parents were seeking appropriate educational options. P3 at 27; D6 at 5. Both Parents reported that the Student's greatest challenges were in the area of communication, and that his other challenges included a long history of communicating with aggression, anxiety, lack of attention, impulsivity, emotional and sensory regulation challenges, and fine and gross motor challenges. P3 at 28; D6 at 6. The Father reported that the Student's strengths included his desire to socialize and communicate with others. P3 at 33; D6 at 11.

44. The Student's Mother reported that when items or activities were denied, the Student engaged in severe aggression and property destruction which could be dangerous to himself and those around him. P3 at 28; D6 at 6. The Parents logged the Student's behavioral challenges, which included troubling violent behaviors such as threatening his younger brother (age ■ with a knife, stabbing his brother in the head with scissors, pinning his mother in a corner and threatening to harm her if his father

left the house, choking his brother, and not allowing his mother to leave the home by grabbing her. *Id.* The Mother reported that she could no longer be alone safely with the Student due to his size, and the Father reported that he no longer went on work trips due to the Student's behaviors. D6 at 10.

45. Dr. Enns was unable to complete cognitive testing due to the Student's inability to perform baseline tasks. D6 at 21. However, he noted that the Student presented with "substantial intellectual, social and communication impairments." P3 at 30, 34; D6 at 7, 11. Dr. Enns further noted that "[t]he most notable aspect of [Student's] functioning was the very high levels of impulsive, hyperactive behaviors any time he was not absorbed with an electric device." *Id.* Dr. Enns concluded that the Student's behaviors seemed driven by two functions: access to attention and access to favored objects. P3 at 35; D6 at 12. Dr. Enns further noted that while there were very minimal demands placed on the Student, and he did not escalate his physical violence during the visit, the Student "showed instances in which it was clear he was on the verge of ramping up his response." *Id.*

46. Dr. Enns also interviewed District staff including Trisha Craig¹⁰ (former District Special Education Director); Annika Bibby (former District Assistant Director of Special Education); Janise Wertz¹¹ (Special Education Program Director); and Ms. Eakle (District BCBA). P3 at 35; D6 at 12. When Dr. Enns expressed that he would visit the DBS clinic later that same day, District staff voiced concern that DBS had not conducted a functional assessment prior to instituting SBT, and expressed frustration that they had not been permitted to observe the Student at DBS. P3 at 36; D6 at 13.

47. District staff informed Dr. Enns that no pre-established classroom existed for the Student in the District, and that a program would have to be designed specifically for him. *Id.* District staff expressed that if the Student returned to a school setting, IEP goals would initially focus on social interactions, problem behaviors and developing functional,

¹⁰ Ms. Craig holds a Bachelor's in Psychology and Masters in School Psychology, and an administrative degree in Special Programs. Tr. 776 (Craig). Ms. Craig also holds an educational staff associate (ESA) certificate in school psychology, and a professional administrator certificate. Tr. 776-777 (Craig). She has worked as the high school psychologist for the District for the past two years, previously worked as the Special Education Director for the District for eleven years, and as Special Education Director for a prior school district for five years. Tr. 777 (Craig).

¹¹ Ms. Wertz holds a Master's in Special Education, a certificate in Applied Behavior Analysis (ABA) therapy, a BCBA certificate, and a certificate in Educational Administration. Tr. 406-407 (Wertz). Ms. Werts currently services as the Special Education Director for the District, and has served in that role since the 2023-2024 school year. *Id.* Prior to holding this position, Ms. Werts was the Special Education Coordinator for the District, a middle school special education teacher for the District for four years, and a special education teacher in Texas for six years. Tr. 408 (Wertz).

adaptive behaviors. P3 at 36; D6 at 13. District staff agreed with Dr. Enns that communication was a primary concern, due to the Student's social needs and the importance of reducing frustration through effective communication. *Id.* Ms. Craig noted that the Haring Center would provide expertise in how to implement appropriate supports in the school once Dr. Enns' report was completed. *Id.* Ms. Craig and Dr. Enns agreed that the Student's access to the school building might be initially limited (perhaps one hour), then increased as the Student showed success. P3 at 37; D6 at 14.

48. Dr. Enns visited DBS in person, observed the space where the Student worked with staff, and spoke to Alexis DaSilva, a BCBA who worked with the Student daily. P3 at 36; D6 at 14; Tr. 513-514 (Enns). Ms. DaSilva described the Student as "bright and fun", and that he enjoyed pre-Covid access to peers. *Id.* Ms. DaSilva further informed Dr. Enns that while skills-based training was effective, the Student's behaviors increased. *Id.* Regarding the Student's communications, Ms. DaSilva reported that he knew quite a few signs, used his device, and gestured a lot. *Id.* She further noted that the Student would be challenged when told "no", denied access to a favored activity or when he did not want to do sometime. *Id.* When confronted with escalating behaviors, the DBS team responded by "wait[ing] him out. Wait for communication." P3 at 37; D6 at 15.

49. Dr. Enns interviewed Ms. Hurtado via telephone. P3 at 37; D6 at 15; Tr. 514-515 (Enns). Ms. Hurtado expressed that the Student had engaged in negative behaviors since he began services in January 2019, including verbal aggression, property destruction, task refusal, spitting, throwing things, pulling hair, and self-injury. *Id.* Ms. Hurtado also reported that the Student was able to acquire skills with enough practice and repetitions and enjoyed interactions with adults. *Id.* However, the Student had more recently begun to perseverate on topics and that any attempts to shift him away from topics would result in aggression, and his behaviors had become difficult to shift. Tr. 514-515 (Enns)

50. Ms. Hurtado explained that in August 2021, the DBS began SBT in an effort to help the Student "tolerate no," so he could acquire more complex skills. P3 at 37; D6 at 15; Tr. 514-515 (Enns). At that time, the Student had been at the DBS clinic 8 hours a day, 5 days per week. *Id.* After the Student broke windows on October 5 and 6, 2021, the DBS team reassessed the situation, and again reintroduced SBT in late October 2021. *Id.* At that time, the Student was in the DBS clinic for 1 hour a day, 3 days in a row, experiencing extreme anxiety and asking to go home, and DBS felt it was no longer capable of meeting the Student's needs. P3 at 37; D6 at 15; Tr. 517 (Enns).

51. Ms. Hurtado reported after DBS began SBT, there were very few instances of the Student being “happy, relaxed and engaged” (“HRE”), and he often required 4 staff members to manage him. P3 at 37; D6 at 15. The Student also often requested to go home, which triggered more aggression. *Id.* Ms. Hurtado noted that the dynamic in the DBS clinic was becoming unmanageable, and that while physical management and holds were always a last resort, the Student was getting out of control. P3 at 37-38; D6 at 15-16; Tr. 515-516 (Enns). Ms. Hurtado expressed that the key for the Student’s progress would be him accepting being told no, and that she did not believe a school was the best option at that point. P3 at 37; D6 at 16.

52. Dr. Enns diagnosed the Student with Autism Spectrum Disorder, Level 3 (requiring very substantial support), with accompanying speech/language and intellectual impairments; Attention Deficit Hyperactivity Disorder (ADHD) – Combined Type; Anxiety Disorder, unspecified; Specific Learning Disorder with impairment in reading; Specific Learning Disorder with impairment in mathematics; Specific Learning Disorder with impairment in written expression; Motor Coordination Disorder (Dysgraphia); and Dyspraxia/Dysarthria (by history). P3 at 23, 44-47; D6 at 1, 21-24; Tr. 517-518 (Enns). Dr. Enns explained that Autism Level 3 is “the most extreme version of autism with intellectual impairment and speech-language impairment,” and described the Student as “really, really challenging.” Tr. 518 (Enns).

53. In his Psychological Assessment, Dr. Enns concluded that the Student required a very high level of supports, and that his excessive impulsivity was the most troubling aspect of his functioning. P3 at 45; D6 at 22. Dr. Enns noted that the Student’s excessive impulsivity resulted in unpredictable and challenging behaviors, and that the Student possessed the physical capacity to inflict harm on others or destroy property without adult intervention. *Id.* Dr. Enns further noted that while the Student’s behaviors at home were relatively mild, the fact that four adults were needed at DBS to manage the Student suggested that his size and irritability had transformed manageable behaviors into a more acute condition. P3 at 46; D6 at 23.

54. Dr. Enns noted that while safety was a primary concern for the Student, both for himself, his brother and adults, there were signs that his Parents were fraying psychologically and prone to post-traumatic stress disorder (PTSD). P3 at 46; D6 at 23. Dr. Enns expressed concern that the Student’s younger brother would also be experiencing severe psychological distress from ongoing threats to himself and the Parents. *Id.*; Tr. 523 (Enns). While Dr. Enns expressed that the District school team possesses a high level of expertise, and employed 3 BCBAs, he concluded that a non-clinical environment would not be able to manage the Student’s behaviors and modify them systematically to guarantee the safety of the Student, school staff and peers. *Id.*

55. Dr. Enns recommended that the Student attend a therapeutic residential treatment center (RTC) with staff explicitly trained in working with persons with ASD and intellectual disabilities who exhibited challenging behaviors. D6 at 24; Tr. 518-519 (Enns). Dr. Enns noted that services should include integrated psychiatric, speech/language and ABA support, and that ABA should be 1:1 with the possibility to flex up to 2:1 if needed. *Id.* Dr. Enns further recommend integrated psychiatric care to sort out medication options prior to re-entry to school. *Id.*

56. Dr. Enns recommended the following possible programs which would provide the level of support described: NECC in Massachusetts, Bancroft in New Jersey, Melmark in Pennsylvania, and May Institute in Massachusetts. D6 at 24-25. Prior to entry in any of these programs, Dr. Enns recommended Kennedy Krieger Institute as a precursor in order to evaluate behavior, psychiatric, communication and occupational needs, and that the District check to see if it was yet open to out-of-state placements. D6 at 25. Dr. Enns further recommended that the Student receive a speech and language assessment prior to any placement to help the Student socialized and access curriculum. D6 at 25.

57. Dr. Enns further opined that the Student's attendance at a residential program might be longer than a year, and that the District should use this time to observe local successful day programs for persons with ASD to prepare for the Student's return home. D6 at 25; Tr. 520 (Enns). After the Student stabilized, perhaps with psychiatric medication, and achieved a level of independence which would allow him to return home, Dr. Enns recommended home support in the form of ABA, psychiatric, speech and language services, PT and OT. *Id.*; Tr. 520-521 (Enns) Dr. Enns additionally recommended the parties work the Haring Center to support the Student, providing gradual exposure to school, parent training/counseling, respite care, and ABS support. *Id.*; Tr. 522-523 (Enns).

December 2021 FBA

58. Dr. Enns' December 2021 FBA noted that the Student's behaviors which most significantly impacted his social interactions and learning included reactive aggression which was daily, high intensity and disruptive, and resulted in aggressive behaviors. P3 at 67-71; D7 at 4-8. These reactive aggressive behaviors resulted in physical harm to others and included hitting, head-butting, property destruction, screaming/yelling, scratching, hair pulling, biting, choking, weaponizing items, throwing objects, and other forms of emotional dysregulation. *Id.* The Student also engaged in daily perseveration behaviors which were mild to severe, and disruptive. P3 at 71-74; D7 at 8-11. These behaviors included perseveration on an activity, idea or phrase to the point that he

could not be transitioned to a new topic, idea or activity without escalating behaviors, including acts of aggression. *Id.*

59. To address the Student's reactive aggression, Dr. Enns recommended specific ABC (Antecedents, Behavior, Consequences) interventions suited to the Student's cognitive/emotional profile to help the Student develop positive patterns of behavior and learn coping strategies to diminish escalations. P3 at 70-71; D7 at 7-8. Dr. Enns recommended the Student receive direct, continuous, expert adult supervision in the same therapeutic space to practice positive patterns of behavior, as well as direct instruction and controlled situations in which he might practice social skills rather than the sporadic social attention he currently received. *Id.* To address the Student's perseveration behaviors, Dr. Enns recommended specific ABC interventions to suit the Student's cognitive/emotional profile to increase his capacity to transition to a new topic/idea with high rates of reinforcement for doing so. P3 at 74-75; D7 at 11-12.

60. Regarding the Student's placement into an RTC, Dr. Enns recommended the following 10 conditions to provide appropriate support for the Student:

- 1:1 Support
- Clarify Expectations and Incentives/Consequences
- Clear Consequences for Aggression
- Pre-teach and Practice De-escalation Behaviors
- Safety Plan
- Functional Communication Training
- Movement Breaks
- Clarify Reinforcement System
- Increase Work Demands
- Parent Coaching

P3 at 76-77; D7 at 13-14.

January 2022 – IEP Reevaluation Invitation and District Assessments

61. On January 7, 2022, the District sent the Parents a notice setting an IEP reevaluation meeting for January 18, 2022, to review reevaluation reports and establish a new IEP. D8; P3.

62. On January 10, 2022, Ms. Eakle completed a Behavior Assessment (January 2022 Behavior Assessment) during a 1-hour home observation with Student and Katrina (Katja) Sias, the District SLP. D8 at 9-10; Tr. 342-343 (Eakle). Ms. Eakle's observations noted the same concerns outlined in Dr. Enns' psychological evaluation,

that the Student required constant redirection and adult attention to prevent him from perseverating or escalating in behaviors. D8 at 9. Ms. Eakle recommended that the Student receive a program rooted in the principles of ABA, and that wherever he received services they should be “engaging and highly motivating.” D8 at 10. Ms. Eakle recommended that the Student’s programs focus on functional communication, tolerance of delay or denial to requested items, activities and events through the use of reinforcement; emotional regulation and teaching simple de-escalation/calming strategies; and planning for appropriate socialization opportunities with peers when the Student’s behavior improved and he was no longer a threat to himself or others. *Id.* Ms. Eakle further recommended that due to difficulties in communication, which raised the potential for significant aggression when the Student was not understood, the team should provide the Student with a mode of communication that allowed him to articulate his wants and needs in a way that would be universally understood. *Id.*

63. On January 10, 2022, Ms. Sias completed a Functional Communication Profile (January 2022 Functional Communication Profile) through a combination of observation at the Student’s home and a parent report. D8 at 10-13. Ms. Sias found that the Student had profound impairments in expressive language, pragmatic/social language and speech; severe impairments in behavior, voice and oral; and moderate impairments in motor, attentiveness and receptive language. D8 at 10-11. Ms. Sias noted that the Student’s hearing and vision were adequate for general communication, and he was able to maintain attention in activities that interested him for at least 5 minutes. D8 at 11. Ms. Sias concluded that the Student required communication instruction designed and monitored by an SLP, and recommended language interventions that included increasing his ability to combine words, and increasing use of his Assistive and Alternative Communication (AAC) device with speech to help the Student communicate with less familiar people. D8 at 13.

64. On or around January 11, 2022, Ms. Eakle additionally created a Functional Communication Training (January 2022 FCT) plan for the Student. D10; Tr. 343-344 (Eakle). Ms. Eakle prepared the plan after talking to the parents, and reviewing information from DBS regarding the Student’s needs. *Id.* Ms. Eakle did not recall the Parents expressing any concerns about the plan. Tr. 345 (Eakle). The FCT plan outlined goals for the Student including obtaining attention from adults, requesting escape or avoiding non-preferred activities/demands, and obtaining access to tangibles and activities. D10. The FCT plan also outlined teaching steps for each goal, steps to correct errors, and how to watch for and address early warning behavior signs. *Id.*

65. On January 17, 2022, Ms. Brewer completed a Fine Motor Assessment after reviewing both DBS and Parent responses to a school function assessment (SFA), as

well as a report by the Student's physician, Dr. Steinman, addressing his functional hand strength. D8 at 13-16. Ms. Brewer concluded that the Student continued to demonstrate fine motor delays which presented an adverse educational impact. D8 at 15. Ms. Brewer recommended an OT intervention plan which included rehab procedures for the purpose of improving upper extremity strength/range of motion, coordination/precision, bilateral/visual-motor integration and functional activity performance. *Id.*

66. Ms. Sherer completed a gross motor assessment after reviewing the SFA. D8 at 17-19. Ms. Sherer concluded that the Student continued to demonstrate gross motor impairments limiting his functional performance, efficiency of movement, independence in the school environment, safety and ease with which new motor tasks were learned. D8 at 19. Ms. Sherer recommended that the Student continue to receive gross motor services from a skilled PT to improve balance, strength, endurance, agility, and coordination. D8 at 18-19.

January 2022 – District Search for Residential Treatment Center (RTC)

67. In early January 2022, prior to the IEP reevaluation meeting, Ms. Craig developed a chart that tracked potential RTCs for the Student, contacts, and responses received. D47; Tr. 790 (Craig). The District developed a list of questions for each facility contacted, including questions suggested by the parents, to determine an appropriate placement. D47 at 1-2. The questions included how the program was set up, number of onsite BCBAs, student to staff ratio, staff training, staffing changes and attrition, availability of therapists, availability of wrap around services to reintegrate into school, communication with districts and parents, length of time a student typically remained in the program, parent training, IEP management, family visitations, and waitlist. *Id.*

68. Ms. Craig initially contacted Bancroft and the May Institute on January 13, 2022. D47 at 3-4; Tr. 790-791 (Craig). Ms. Craig additionally contacted NECC, Kennedy Krieger and other institutions, and the Parents completed intake forms. D47 at 2-4; Tr. 789-791 (Craig). However, there were no successful results from this search. *Id.* Bancroft had a six-month waitlist, and would contact the District when an opening occurred. D47 at 1-2. NECC was not accepting new enrollments, and requested the District call back monthly. *Id.* Melmark also had a waiting list and did not anticipate any openings until September 2022. *Id.* The Parents expressed concern about the quality of the May Institute, so the District did not pursue this option. D47 at 2. Several other facilities did not appear appropriate for the Student based on responses to questions. D47 at 4-5.

January 2022 Reevaluation

69. The IEP reevaluation team met on January 18, 2022, to discuss the reevaluation, placement of the Student in a residential program, and to establish a new IEP. D8, D9. See *also*, P3, P4. Attendees included the Parents; Ms. Sherer (District PT); Ms. Brewer (District OT); Ms. Craig (District Special Education Director); Ms. Bibby (former District Assistant Director of Special Education); Dr. Enns; and Ms. Hill (contracted SLP). D8 at 1, 7; D9 at 1; Tr. 507 (Enns); Tr. 844 (Craig); Tr. 129 (Brewer); Tr. 189 (Sherer); Tr. 476-477 (Hill).

70. The IEP reevaluation referenced Dr. Enns' December 2021 Psychological Assessment for background information, Student observations, cognitive assessments, social/emotional assessments, and adaptive assessments, and noted that the evaluation was "attached" to the reevaluation. D8 at 8, 10. The District later attached both Dr. Enns' January 2022 Psychological Evaluation and FBA to the IEP reevaluation. Tr. 848-849 (Craig). See *also*, P3.

71. Ms. Craig provided additional notes with the Student's background information. D8 at 8. Ms. Craig noted that while DBS had served the Student for the last 3 years, his recent behavior had become increasingly violent and DBS placed him on a half-day schedule to regain instructional control and improve behavioral outbursts. *Id.* Ms. Craig further noted that the Parents had determined that they needed to remove him from DBS due to lack of staffing consistency and disagreement with behavior protocols, and that an early 3-year reevaluation was warranted given the extreme change in placement and needs. *Id.* The reevaluation contained Ms. Eakle's January 10, 2022 Behavior Assessment, Ms. Sias' January 10, 2022 Functional Communication Profile, Ms. Brewer's January 17, 2022 Fine Motor Assessment, and Ms. Sherer's gross motor assessment. D8 at 9-10, 10-13, 13-16, 17-19.

72. The IEP team proposed that the Student be placed in an RTC to meet his behavioral needs, and noted that DBS was not sufficiently staffed to support the Student. D8 at 20. The IEP team further noted that due to the Student's current unpredictable nature, and the recommendation that he required multiple people capable of providing safety care and physical restraints, the school setting would not be able to create an environment that met his needs and address safety concerns. *Id.* The IEP team further noted that the Student's home also had the same safety concerns. *Id.*

73. The January 2022 reevaluation recommended SDI in the areas of cognitive, behavior, social/emotional, and adaptive/self-help; related services in fine motor,

gross motor, and communication; and BCBA supplementary aids and services. D8 at 6-7. The reevaluation further specified that “[a] separate articulation assessment is being completed by Renee Hill, M.A. CCC-SLP as part of this evaluation.” D8 at 12. However, the January 2022 reevaluation did not recommend parent counseling and training as a supplementary aid or service. D8 at 6. The reevaluation also did not specifically recommend recreation or therapeutic recreation for the Student as a related service. *Id.*

74. The IEP reevaluation noted that the Student continued to meet the disability category of “Health Impairments,” but the IEP team agreed to change the Student’s category to “Multiple Disabilities” to reflect the extreme complexity of the Students’ various diagnoses. D8 at 5; Tr. 477 (Hill); Tr. 524-525 (Enns); Tr. 291 (Father); Tr. 784-875 (Craig). Ms. Hill signed the Evaluation Summary on January 18, 2022, while Dr. Enns signed it via Zoom that same day. D8 at 7. No dissenting opinions were included. *Id.*

75. A PWN dated January 18, 2022, reflected that the District proposed that the Student be placed in an RTC in order to meet his behavioral needs, and that the action would be initiated on February 2, 2022. D8 at 20. The PWN indicates Ms. Craig sent the Parents a copy of the PWN. D8 at 20.

January 2022 IEP

76. As outlined above, the IEP team met on January 18, 2022, to discuss the IEP reevaluation and review the current IEP. D9 at 1, 4. The IEP team addressed the Student’s present levels of performance in the areas of cognitive, social/emotional, behavior, adaptive/self-help, communication, fine motor, and gross motor. D9 at 12-33. The IEP did not discuss the need for a Behavioral Intervention Plan (BIP). D9 at 4. Further, the IEP was not completed until after additional IEP meetings were conducted in February 2022. D9 at 2; D12; D13; D14.

77. On February 2, 2022, the District held another IEP team meeting to discuss IEP goals and the District’s progress on securing a placement. D12. The PWN indicated that Ms. Craig, Ms. Bibby and the Parents attended the meeting. D12 at 3. The PWN for this meeting reflected that the District and family agreed that the Student’s IEP goals should focus more on functional living skills, that the District found many facilities to be inadequate to meet the Student’s needs, and that the District had placed the Student on the waiting list for Bancroft. D12 at 3. A follow-up meeting date was set for February 16, 2022. *Id.*

78. The Parents do not recall whether they attended the February 2, 2022 IEP meeting or received the PWN, explaining that they were losing a lot of sleep in February 2022 because the Student was home full time, and thus they did not recall a lot during that period of time. Tr. 280-281 (Father). However, the Parents signed the Evaluation Summary on February 2, 2022, along with Ms. Bibby, Ms. Sias, Ms. Craig, and Ms. Eakle. D11; Tr. 275 (Father). Other IEP team members signed via Zoom on February 2, 2022, including Ms. Sherer, a general education teacher, and a school psychologist. *Id.* No dissenting opinions were included. *Id.*

79. On February 16, 2022, the District held another IEP team meeting to address the Student's goals for communication, fine motor and gross motor skills. D13. the PWN indicated that the Parents attended this meeting and provided input. D13 at 3. However, the Parents again did not recall the meeting and did not recall if they received the PWN. Tr. 282-283 (Father).

80. The PWN for this meeting contained notes reflecting that the District and Parents considered the potential need for both a Speech Language Pathology Assistant (SLPA) and an RBT/1:1 support for the Student throughout the day. D13 at 3. The PWN further reflects that Ms. Hill expressed that this level of support was not necessary for the Student to make growth with his language, but that it would be important for all staff to be trained with how to best support behavior and facilitate communication with the Student. *Id.* A follow-up meeting date was set for February 25, 2022. *Id.*

81. On February 25, 2022, the District held another IEP team meeting to address the Student's goals for cognitive, adaptive, social/emotional and behavior. D14. The PWN for this meeting indicated that the Parents, family attorney, school attorney, special education administrator, and teacher met for this follow up, and that the Parents provided input. D14 at 3. Again, the Parents did not recall attending this meeting or whether they received a copy of the PWN. Tr. 283 (Father).

82. The PWN for this meeting contained notes reflecting that the IEP team considered adding a goal to identify strangers from familiar or safe people, but the team decided to wait on this goal due to the nature of an upcoming placement and that all of the people in the Student's new environment would be strangers. D14 at 3. PWN notes further reflect that the team added a statement to the LRE that SLP time would be determined by the skills and abilities of the future SLP in the residential placement. *Id.*

83. An IEP was developed for the Student for the period of January 31, 2022 through January 30, 2023 (January 2022 IEP), although the PWN specified it would be initiated on March 31, 2022. D9 at 1, 41. The IEP included ten cognitive goals; four social/emotional goals; six behavior goals; seven adaptive/self-help goals; six communication goals; five fine motor goal; and three gross motor goals. *Id.* The IEP did not include a BIP. *Id.*

84. The IEP indicated that the Student would receive all SDI and related services at a private residential facility, and would be monitored by the District, but did not identify the specific residential facility. D9 at 39. The IEP special education and related services matrix provided as follows:

Services 01/31/2022 - 01/30/2023

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Gross Motor	PT	PT	260 Minutes / 1 Times Monthly	Special Education	01/31/2022	01/30/2023
No	Fine Motor	OT Staff	OT	300 Minutes / 1 Times Monthly	Special Education	01/31/2022	01/30/2023
No	Communication	SLP	SLP	30 Minutes / 2 Times Weekly	Special Education	01/31/2022	01/30/2023
No	Communication	School Personnel	SLP	30 Minutes / 3 Times Weekly	Special Education	01/31/2022	01/30/2023
No	Communication	SLP	SLP	90 Minutes / 1 Times Daily	Special Education	01/31/2022	01/30/2023
No	Fine Motor	Special Education Staff	OT	15 Minutes / 5 Times Weekly	Special Education	01/31/2022	01/30/2023
Special Education							
No	Cognitive	School Personnel	Special Education Teacher	46 Minutes / 2 Times Daily	Special Education	01/31/2022	01/30/2023
Yes	Behavior	BCBA	BCBA	60 Minutes / 1 Times Daily	Special Education	01/31/2022	01/30/2023
No	Social/Emotional	Special Education Staff	Special Education Teacher	50 Minutes / 1 Times Daily	Special Education	01/31/2022	01/30/2023
No	Adaptive/Self Help	Special Education Staff	Special Education Teacher	70 Minutes / 1 Times Daily	Special Education	01/31/2022	01/30/2023
Total minutes per week student spends in school:				1800 minutes per week			
Total minutes per week student is served in a special education setting:				1875 minutes per week			
Percent of time in general education setting:				-4.17% in General Education Setting			

D9 at 38.

85. The IEP also provided the following supplementary aids and services, to be provided at the residential facility:

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Yes	Dedicated Aide	1:1 Support	Special Education Teacher	360 Minutes / 1 Times Daily	Special Education	01/31/2022	01/30/2023
No	Consultation	BCBA	BCBA	60 Minutes / 2 Times Monthly	Special Education	01/31/2022	01/30/2023
Yes	Consultation	Neurological developmental team member	BCBA	60 Minutes / 1 Times Yearly	Special Education	01/31/2022	01/30/2023
Yes	Indirect Speech/Language Services	SLP	SLP	30 Minutes / 1 Times Daily	Special Education	01/31/2022	01/30/2023
No	Indirect Speech/Language Services	SLP	SLP	15 Minutes / 1 Times Weekly	Special Education	01/31/2022	01/30/2023

D9 at 38.

86. The IEP specified that the Student would receive extended school year (ESY) services in cognitive, behavior, social/emotional, and communication services. D9 at 12, 16, 18, 21, 25, 40. The IEP also provided additional details regarding the delivery of SDI and the Student's educational placement:

[Student] will receive all specially designed instruction and related services in a residential placement. Where special education is identified in the service matrix, it means a residential placement.

....

[Student] will not have access to general education peers at this location. There may be variation on [Student's] service matrix due to the variability of his schedule at his placement due to behavior, instructional programming, preference assessments, etc. . . .

D9 at 39.

87. The January 2022 IEP referenced Dr. Enns' January 2022 Psychological Evaluation, but did not reference Dr. Enns' December 2021 FBA. D9 at 12. The final version of the January 2022 IEP, completed after the February 25, 2022 IEP meeting, referenced "Appendix B for Oral Motor Report" before communication goals. D9 at 24-26; D14.

88. A PWN informed the Parents that the proposed actions would be initiated on March 31, 2022. D9 at 41. The PWN for the January 2022 IEP indicates that Ms. Bibby sent the Parents a copy of the PWN. D9 at 41. The Parents did not recall receiving the PWN or the IEP after the meeting. Tr. 280 (Father).

2022 Oral Motor Report

89. Sometime prior to the completion of the January 2022 IEP, Ms. Hill conducted an updated oral motor report for the Student (2022 Oral Motor Report). P5; Tr. 477 (Hill). The report is undated, and Ms. Hill did not recall the exact date she completed it.¹² Tr. 477, 486-489 (Hill). The report proposed 20 updated speech and communication goals for the Student, focusing on specific bilabial, vowel and consonant sounds, mouth and lip positioning, blowing bubbles, straw drinking, inhale/exhale, tongue placement, sustained voice, chewing, and the production of high-frequency words on his list with visual prompts. P5 at 4-6; Tr. 479 (Hill).

90. The 2022 Oral Motor Report further outlined seven recommendations for the Student's new placement to support his speech and language therapy. P5 at 2-3; Tr. 480 (Hill). The report noted that those working with the Student should understand that the Student was highly social with limitations in functional communication including vocalizations, expressive and receptive language skills. P5 at 2 (Recommendation #1). Ms. Hill further noted the Student had the ability to improve if provided support, but could lose skill when not maintained, and that his apraxia affected the consistency of his word approximations and intelligibility, while his dysarthria caused muscle weakness and difficulty in moving his mouth as he intended. *Id.* (Recommendation #2).

91. Ms. Hill noted that the Student had done best when a therapist/technician had received in-person training in ST, as tele-therapy in functional communication required the team to not only know how to shape the Student's speech, but also to develop language skills while keeping pace with motor skills. P5 at 2-3 (Recommendation #3). Ms. Hill recommended that the Student receive services from a highly skilled local SLP with the capability to integrate his desire to communicate verbally, with a strong motor background, and a solid skillset in language acquisition for children with Autism and challenging behaviors. P5 at 3 (Recommendation #5). Ms. Hill additionally offered to assist in training and consultation after a new placement was found and a new SLP was in place and recommended that any SLP assigned to the Student have taken specific training such as "A Three Part Treatment Plan for Speech and Feeding," and "Taking

¹² Ms. Hill initially testified that the during the January 18, 2022 IEP reevaluation meeting, the District asked her to complete a new report, and that she did so sometime after the Student left DBS, but before he went to Lindens at Bancroft in July 2022. P5; Tr. 486-487 (Hill). Ms. Hill later testified that she referred to her Oral Motor Report during the January 18, 2022 reevaluation meeting. *Compare*, Tr. 477, 488-489 (Hill).

Your Client with ASD from Non-Vocal to Verbal”, as well as training in PROMPT or taken “A Sensory Motor Approach to Apraxia of Speech.” P5 at 3 (Recommendation #7).

92. Ms. Craig, the IEP case manager, initially created the January 2022 reevaluation report in “IEP Online,” the District’s on-line records system. D8; Tr. 831-833, 836-838, 848-849, 937-938 (Craig). She later attached Ms. Hill’s 2022 Oral Motor Report, along with Dr. Enns’ January 2022 Psychological evaluation and FBA, to the January 2022 reevaluation. *Id.* The District thereafter sent all of these documents to Lindens. Tr. 901-904 (Craig). See also, P3; Tr. 114-115 (Brewer).

March 2022 – Student Hospital Admission and Updated RTC Search

93. On or around Saturday, March 20, 2022, after increasing aggression from the Student at home toward his family and younger brother, the Parents reluctantly admitted the Student to the emergency department (ED) at Seattle Children’s Hospital, where he waited until a bed opened at the Psychiatry and Behavioral Medicine Unit (PBMU). P6; D31 at 2.

94. On Tuesday, March 22, 2022, the Parents informed the District of the Student’s hospitalization, and requested that it reach out to Bancroft to provide a copy of the current IEP and explain the urgency of the situation. P6 at 1. The Parents informed the District that they were working with Kennedy Krieger, another residential program, to determine if the Student’s acceptance could be prioritized. *Id.*

95. Also on March 22, 2022, Ms. Bibby updated the Parents regarding the search for a residential placement, informing them that Bancroft had no update, NECC was not accepting new enrollment but had the Student’s information when enrollment opened, and that she was still waiting to hear back from Kreiger. P6 at 3. Ms. Bibby also included a release form for PBMU. *Id.* The Parents signed this release and sent it back to Ms. Bibby the same day. P6 at 3-4. See also, P47 at 9.

96. By Monday, March 28, 2022, the Student had remained in a small exam-sized room in the ED for over a week. P6 at 6. The Student had undergone multiple 4-person holds, and multiple 4-point restraints on a board, and the ED staff had resorted to several new emergency medications. P6 at 1, 6. The Parents informed Ms. Bibby that they had looked into a program at Amego over the weekend, and requested the District follow up with questions and send in the referral form. *Id.* Ms. Bibby contacted Amego, was waiting for a call back, and indicated she would call again the next day. *Id.* Later that same day, the Parents informed the District that PBMU still had not opened a bed

for the Student. P6 at 6. The Parents also requested that the District inform them of other potential placements. *Id.*

97. On March 29, 2022, Ms. Bibby asked if the Parents would like the District to establish an onsite school program for the Student. P6 at 7. The Parents responded that they would be interested in a comprehensive interim program for the Student, but that they were concerned about providing a safe home for the Student and their younger child. *Id.*

98. That same day, the Parents signed releases to provide the Student's educational records to potential residential facilities including Hillcrest Educational Foundation, Albertina Kerr, Woods Services, Springbrook Behavioral Health, Bayes Achievement Center, and Devereux. P47 at 10-16. Ms. Craig also updated her residential placement search list. D47 at 1; Tr. 786, 788-790 (Craig). She added a list of potential placements provided by Children's Hospital, and updated her prior notes. *Id.* The updated search list indicated that of the four facilities recommended by Dr. Enns, the Student was on the wait list for Bancroft and that the May Institute had the Student's file for review and utilized rolling enrollment. *Id.* However, neither NECC nor Melmark were currently accepting applications. *Id.* The search list further indicated that the Parents were completing an application to Springbrook, but that its waitlist was 1-4 months. *Id.* Monarch, another RTC, was not accepting applications, and Grafton also had no timeline due to staffing. *Id.*

99. The Student was transferred from the ED at Seattle Children's Hospital to PBMU on March 31, 2022, and was discharged on or around April 20, 2022. P6 at 1; D31 at 2. During his admission at PBMU, he engaged in fecal smearing, physical aggression, self-injurious behavior, and property destruction. *Id.* PBMU was successful at reducing instances of aggression using a behavior plan and providing 1:1 attention. *Id.*

100. Before PBMU would discharge the Student, it required that a support plan be in place with the District. Tr. 285 (Father). However, the Student remained home, and did not receive any District services, between April 20 2022 and May 9, 2022. D15; D16; D17; Tr. 285 (Father).

May 2022 Interim Education Program

101. On May 5, 2022, the District held an IEP team meeting to address an interim educational program for the Student while the team continued to pursue a residential placement. D15. The PWN did not indicate who attended this meeting, but indicated

that the District gathered information from PBMU, reviewed potential locations, engaged in multiple planning meetings, consulted with two District BCBAs in developing an interim placement for the Student, and provided a virtual tour to the family and PBMU. D15 at 3. The PWN further specified that Ms. Bibby sent the Parents the PWN. *Id.*

102. That same day, Ms. Eakle and Ms. Wertz created a proposed daily schedule for the Student consisting of transportation and activities averaging about one hour per day. D16; Tr. 345-346 (Eakle). The daily schedule indicated that on Mondays, the Student would take the bus to school around 11:23 a.m., transition into the building, engage in Functional Communication Training (FCT) training and snack preparation, clean-up, and take the bus home around 12:10 p.m. D16 at 1. On Tuesdays through Fridays, the Student would take the bus to school around 12:45p.m., transition into the building, engage in FTC training and snack preparation, clean-up, and take the bus home around 1:45 p.m. D16 at 2.

103. Throughout this process, the Student would receive 3:1 support from one lead staff and two supporting staff, consisting of Ms. Eakle, Ms. Wertz and Ms. Bibby. D16; Tr. 346-347 (Eakle). Ms. Bibby e-mailed the proposed schedule to the Parents on May 5, 2022, stated that the interim program would start on Monday, May 9, 2022, and that she believed the Student would “successfully reintegrate into the school setting.” D16; D73.

104. District records reflect that the Student participated in this weekly schedule for with 3:1 support without any behavior or aggression incidents, through at least Friday, May 27, 2022. D16; D17; Tr. 349-350 (Eakle). The Student built a rapport with the three staff, and worked on FCT, such as requesting access to tangible items. Tr. 347-348 (Eakle). Ms. Brewer also provided the Student with OT services and fine motor exercises on Wednesday, May 25, 2022, and again on Wednesday, June 1, 2022. D57 at 1. The Student exhibited no negative behaviors during these sessions. *Id.*

105. Ms. Hill also provided direct SLP services to the Student for a short period of time in May 2022 during the Student’s interim placement, with Ms. Eakle and Ms. Bibby. Tr. 603-604 (Hill). This was the last time Ms. Hill saw the Student in person. Tr. 605 (Hill).

106. Despite the fact that the Student’s January 2022 IEP included ESY services in cognitive, behavior, social/emotional, and communication, the District did not provide any ESY services to the Student between May 27, 2022, and when he was admitted

to Bancroft in July 2022. D9 at 12, 16, 18, 21, 25, 40; D16; D17; D18; Tr. 262, 281; 1172, 1174, 1179, 1204 (Father); Tr. 1288 (Mother). During this period of time, the Student remained at home and only received SLP services provided by Ms. Hill with the assistance of the Father. *Id.* Ms. Brewer's and Ms. Sherer's OT and PT progress notes simply indicate "Student Not Available." D57 at 2-4; D58 at 1-3.

2022-2023 School Year (Lindens at Bancroft)

July 2022 – Student's Admission to Lindens

107. On or around July 20, 2022, the Student was admitted to the Lindens program at Bancroft. D18; D19 at 10; Tr. 286 (Father). The Lindens program is on the Bancroft school campus with three residential duplex buildings intended for Students with more intense behavioral concerns. Tr. 286-287 (Father). The Student remained in the Lindens residential treatment facility and did not access the adjacent school at Bancroft until September 4, 2024. D38 at 2; Tr. 316 (Father).

July 2022 Behavior Intervention Plan (BIP)

108. On July 20, 2022, Samantha Fioravanti, a BCBA at Bancroft developed a draft behavior plan (July 2022 BIP) for the Student focusing response prevention and redirection. D18. The behavior plan included continuous reinforcement of interventions for aggression, property destruction, screaming, and perseveration, such as removing materials and allowing for 30 second breaks, providing attention for occurrence of problem behavior, and providing 30 seconds of access to a tangible item/activity. D18 at 1. The behavior plan specified that the continuous reinforcement of these interventions would allow Bancroft to collect accurate baseline data about the Student's behaviors, and that the data collection on would be used for evaluating and monitoring the effectiveness of the plan. D18 at 2-3.

109. The July 2022 BIP also noted that an FBA would be determined at a later date. D18 at 1. The behavior plan did not reference Dr. Enns' December 2021 FBA, or include many of the recommendations outlined in his FBA such as functional communication training. *Compare*, D17 at 13-14; D18.

110. Beginning July 20, 2022, the Lindens BCBA established the following admission baselines for the following targeted behaviors:

Goal	Admission Baseline
Aggression	2.13 instances/hr

Disruption	0.47 instances/hr
Inappropriate Social Behavior	0.14 instances/hr
Latency to Transition	14.11 minutes/day (851 s)

D44 at 1. See *also*, D56 at 8. Lindens also maintained Quarterly Progress Notes regarding the Student's behaviors. *Id.*

August 2022 BIP

111. On August 12, 2022, the District sent the Parents a draft IEP in preparation for an IEP meeting scheduled for August 16, 2022. D19 at 3.

112. On August 16, 2022, the IEP team met to create an IEP and Behavioral Intervention Plan (BIP) to be implemented while the Student resided at Lindens. D19; D20; D21. The Father attended this meeting, and the IEP team discussed both the BIP and the IEP. Tr. 303-306 (Father).

113. Other attendees included the Parents' attorney; Ms. Hill (contracted SLP); Samantha Price (Lindens OT); Stephanie Grilli (Lindens Education Supervisor); Lauren Adkins (Lindens M.A.); Laurie Tompkins (Lindens RBT); Miranda Emerson (Bancroft Social Worker); Michelle Esposito (Bancroft special education teacher); Hillary Waller (Bancroft SLP); Samantha Fioravanti (Bancroft BCBA/Behavior Analyst); Ms. Craig (District Special Education Director); Wendy Bromley (District Assistant Special Education Director); Ms. Wertz (District Special Education Coordinator/BCBA); Ms. Brewer (District OT); Ms. Sais (District SLP); and the District's attorney. D19 at 4, 33; D20 at 2; D18 at 1; D23 at 1; Tr. 197 (Sherer); Tr. 297 (Father); Tr. 414 (Wertz). See *also*, D28 at 29.

114. The IEP team developed a BIP to address the Student's negative behaviors based on behavior data Ms. Wertz received from Lindens in August 2022 (August 2022 BIP). D21; Tr. 418-419 (Wertz). The BIP indicated that the Student was receiving intensive behavioral intervention determined by a clinical team, including behavior analyst and ABAs. *Id.* The BIP identified the targeted negative behaviors of aggression, disruption, forced urination, and disrobing. D21 at 1-2.

115. The August 2022 BIP included data collection procedures and provided that the BCBA and Linden's team would be responsible for its implementation. D21 at 5. The BIP included intervention, antecedent, teaching, and consequence strategies, as well

as reinforcement, response and de-escalation plans. D21. The Student's IEP team also developed an emergency response plan (ERP). *Id.* A PWN dated August 10, 2022, indicated that the team would reconvene in September 2022, which would allow the residential facility additional time to collect data on behavior. D22 at 31; D23 at 1.

September 2022 IEP

116. During the August 16, 2022 IEP meeting, the IEP team also reviewed the Student's IEP goals and SDI and created an IEP for the period of September 7, 2022 through September 6, 2022 (September 2022 IEP). D22; D23. The September 2022 IEP included cognitive, social/emotional, behavior, adaptive/self-help, and fine motor goals. D22 at 11-16, 21-24.

117. The September 2022 IEP referenced the August 2022 BIP and noted that between July 20, 2022 and August 2022, Bancroft staff reported aggression rates of 2.26 rates per hour (rph); property destruction of 0.54 rph; screaming at 2.82% of waking intervals; 18.34% of perseveration intervals; 4.22% of disrobing intervals; and 16.33% of dropping intervals. D22 at 14; D21; Tr. 418-419 (Wertz). The IEP further noted that the Student received intensive behavioral intervention determined by a clinical team, including BCBAs and ABAs. D22 at 10.

118. In response to this data, the IEP included one social/emotional goal that focused on coping skills, and three behavior goals that focused on completing tasks, independently engaging in a single activity, and independently engaging in two activities. D22 at 14-15.

119. The IEP team also assessed the Student's gross motor skills inside his residential unit as well as outside on the playground. D22 at 21. The assessment noted that the Student leaned to the right while standing, he exhibited protracted head and shoulder posture while sitting and standing, and demonstrated core and lower extremity weakness that may affect his participation and safety in navigating the residential environment. *Id.* The assessment recommended that the Student receive a daily home exercise program to address posture, core and extremity strength, and that he be encouraged to hold an upright head and truck posture in sitting and standing. D22 at 21. However, the IEP team noted that Lindens had no PT available, and thus "PT services are not being recommended." D22 at 31. The IEP team further noted that the main goal of the facility was reduction of dangerous behaviors, rather than a large amount of time on related services." *Id.* The IEP noted that students in the residential Lindens program could receive additional ST, OT and psychotherapy therapy, funded through the District, but did not outline any PT services for the Student. D22 at 21. The

Student did not thereafter receive any gross motor services while at Lindens. Tr. 991-992 (Wertz).

120. The September 2022 IEP included the following service matrix in special education services and related services:

Services 09/07/2022 - 09/06/2023							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Fine Motor	OT Staff	OT	30 Minutes / 2 Times Weekly	Special Education	09/07/2022	09/06/2023
No	Communication	SLP	SLP	30 Minutes / 3 Times Weekly	Special Education	09/07/2022	09/06/2023
No	Communication	School Personnel	SLP	60 Minutes / 1 Times Weekly	Special Education	09/07/2022	09/06/2023
No	Fine Motor	School Personnel	OT	30 Minutes / 1 Times Weekly	Special Education	09/07/2022	09/06/2023
Special Education							
No	Cognitive	School Personnel	Special Education Teacher	121 Minutes / 5 Times Weekly	Special Education	09/07/2022	09/06/2023
No	Adaptive/Self Help	School Personnel	Special Education Teacher	160 Minutes / 7 Times Weekly	Special Education	09/07/2022	09/06/2023
No	Behavior	School Personnel	Special Education Teacher	161 Minutes / 7 Times Weekly	Special Education	09/07/2022	09/06/2023
No	Social/Emotional	School Personnel	Special Education Teacher	159 Minutes / 7 Times Weekly	Special Education	09/07/2022	09/06/2023
Total minutes per week of building instructional time available for this student (excluding lunch):				4205 minutes per week			
Total minutes per week student is served in a special education setting:				4205 minutes per week			
Percent of time in general education setting:				0% in General Education Setting			

D22 at 28.

121. While the IEP service matrix included SDI in communication, the September 2022 IEP did not include any communication goals which were included in an earlier draft of the IEP. *Compare*, D19 at 24-26; D22. The September 2022 IEP also did not include the supplementary aids and services included in the earlier draft, including providing Bancroft staff with 2 days each year of training from Ms. Hill, 30 minutes per week of consultation with Ms. Hill for Bancroft SLP to deliver OPT treatment, or payment of travel for the family to visit the Student at Bancroft. *Compare*, D19 at 30-31; D22 at 28.

122. Nevertheless, between March 2023 and August 2023, Ms. Waller, the Bancroft SLP, completed three progress reports related to the seven communication goals outlined in the draft IEP. *Compare*, D19 at 24-26; D42. These progress reports indicate that Ms. Waller also provided SLP services to the Student in conjunction with Ms. Hill,

who provided OPT treatment virtually. *Id.* The family also acknowledges that the District paid for the Parents to visit Lindens, and for the Student to come home during the summer and Christmas. Tr. 296, 1238 (Father). However, Ms. Hill never conducted annual training at Lindens as outlined in September 2022 IEP, and was not asked to complete one. P3; Tr. 499 (Hill).

123. Ms. Wertz sent the Parents a PWN after the September 2022 IEP was finalized, along with IEP meeting notes she created at the meeting. D22; D23 at 1; Tr. 417, 1014-1016 (Wertz). The PWN did not mention any request by the Parents to include parent counseling or training, or recreation and/or therapeutic recreation for the Student. D19; D22.

September 2022 – IEP Meeting

124. The IEP team met again on September 13, 2022. D22 at 31; D23 at 1-2. There is no record of any notice associated with this meeting, and no record of attendees, although Ms. Wertz prepared notes associated with the meeting. D22; D23 at 1-2; Tr. 421-423 (Wertz). The Father acknowledged that he attended an IEP meeting in September 2022, where the IEP team discussed both the IEP and the BIP. Tr. 303-306 (Father). Meeting notes indicated that an updated draft of the IEP was sent to the Parents on September 12, 2022. D23 at 1.

125. IEP team meeting notes indicated that the Student was currently receiving three 30-minute sessions per week of individual SLP services, 60 minutes per week of group speech for social skills, 30-minutes per week of participating in a social skills group with the OT and special education teacher, 30-minutes per week participating in a social skills group with the psychology therapists, and 30-minutes per week of psychotherapy. D22 at 31; D23 at 1. Meeting notes further indicated that Bancroft was providing 4.5 hours weekly of generalized instruction in the morning, and 5 hours weekly of generalized instruction in the afternoon. D22 at 31.

126. The IEP team continued to recommend that the main goal was to reduce the Student's dangerous behaviors, and that Bancroft would not provide PT services at that time. D22 at 31; D23 at 2. The Bancroft behavior analyst shared a report on current observed behavior and an interim BIP. *Id.* Bancroft staff further indicated that it was in the process of completing a functional analysis (FA), and a BIP would be completed by the end of the week targeting school refusal and other behaviors. *Id.*

October 2022 – IEP Meeting and BIP

127. The IEP team met again on October 11, 2022 to discuss the Student's BIP. D23 at 2. There is no record of any notice associated with this meeting, and no record of who attended this meeting, although Ms. Wertz prepared notes. D22 at 32; D23 at 1-2; Tr. 421-424 (Wertz). The IEP team discussed PT and recommended that the Student not receive PT at that time, to instead focus on addressing his behavior regulation needs for six months and to focus on intensive behavior support to regulate his ability to access PT services. D23 at 2. The IEP team indicated that the OT could implement PT recommendations, but this was not included in the IEP. *Id.*

128. IEP team meeting notes indicate that the team was still completing a FA, and that Bancroft shared a behavior plan (October 2022 BIP) which it had reviewed with the Parents the week prior and made edits based on the Parents' feedback. D23 at 2; D24.

129. The October 2022 BIP was authored by Ms. Adkins, Lindens M.A., and would be supervised by Ms. Fioravanti, Bancroft BCBA. D24. The behavior plan identified the targeted negative behaviors of aggression, disruption, refusal to transition, forced urination, and disrobing. *Id.* The behavior plan identified the following interventions: hierarchical prompting; structured schedule; differential reinforcement of alternative behavior (DRA); de-escalation; and planned ignoring, response prevention and redirection. D24 at 1-4. See *also*, D56.

November 2022 – Progress Report

130. Ms. Craig did not visit Lindens while she was the Student's case manager, from at least July 2022 until June 2023. D19; D27; Tr. 928-931 (Craig). Rather, Ms. Craig received quarterly progress reports from Lindens and participated in quarterly meetings with Lindens during which time she discussed Student progress and Parent visits. Tr. 809-810 (Craig).

131. On November 30, 2022, Ms. Esposito (Bancroft special education teacher), assessed the Student's progress toward his September 2022 IEP cognitive, adaptive/self-help, social/emotional, and behavior goals (November 2022 Progress Report). *Compare*, D22 at 11-16; D52 at 1-3.

132. The November 2022 Progress Report reflected that the Student met his first and second cognitive/language arts goals at 89% accuracy (comprehensive questions and wh- questions); averaged 73% accuracy on his cognitive/writing goal (stamping

his name); averaged 68% accuracy with his second cognitive/math goal (counting objects with 1:1 correspondence up to 5); mastered his first behavior goal with 93% accuracy (First/Then board); averaged 52% accuracy on his first adaptive/self-help goal (household daily living tasks); averaged 3.4 prompts on his second adaptive/self-help goal (washing hands); and that she had introduced the social/emotional goal (self-regulation). *Compare*, D22 at 11-16; D52 at 1-3.

133. Ms. Eakle, then the District BCBA, received the November 2022 Progress Report from Lindens, and she used it to prepare District IEP progress reports. *Compare*, D52 at 1-3; D42 at 1-3, 15-18; Tr. 359-360 (Eakle). Ms. Eakle acknowledged that no one from the District visited Lindens to ensure the Student was receiving services. Tr. 395-396, 399 (Eakle).

134. There is no record of the Student's progress on fine motor, gross motor, or communication goals as of November 2022. D42; D50. Ms. Hill visited the Student at Lindens sometime during the winter of 2022, but there is no record of any oral motor sessions during this period of time. D43; D45; D49; Tr. 487 (Hill).

December 2022 BIP

135. Between October 11, 2022 and December 28, 2022, Lindens recorded the following reduction in the targeted behaviors of aggression and disruption in response to the October 2022 BIP:

Goal	Admission Baseline (07/20/22 - 10/11/22)	Initial BIP (10/11/22 - 12/28/22)
Aggression	2.13 instances/hr	0.61 instances/hr
Disruption	0.47 instances/hr	0.12 instances/hr

D56 at 8.

136. On December 28, 2022, Bancroft updated the Student's behavior plan based on their data collection (December 2022 BIP). D25. The prior BIP had addressed forced urination and disrobing, but the Student no longer engaged in those behaviors at a clinically significant level. D25 at 4. Bancroft's updated BIP identified the targeted negative behaviors of aggression, disruption, inappropriate social behavior, and latency to transition. *Id.* The behavior plan identified the same interventions as contained in the October 2022 BIP. *Compare*, D24 at 1-4; D25 at 1-4.

February 2023 IEP Meeting

137. On February 10, 2023, the District held an IEP meeting to review the service matrix in the IEP. D26 at 3. Attendees included the Parents; their attorney; Ms. Hill (contracted SLP); Ms. Craig (District Special Education Director); Ms. Bromley (Assistant Special Education Director); Ms. Wertz (Special Education Coordinator); Ms. Waller (Bancroft SLP); Alexa Heon (SLP Student); Ms. Esposito (Special Education teacher); Ms. Fioravanti (Bancroft BCBA); Ms. Grilli (Lindens Special Education Supervisor); and the District's attorney. *Id.*; Tr. 805 (Craig); Tr. 560 (Wertz).

138. A PWN dated February 10, 2023, reflected that Parents requested that the IEP service matrix for related services for speech, PT and OT reflect the service minutes that were present in the Student's previous January 2022 IEP. D26 at 3. The Parents expressed that the service matrix for related services did not reflect what the Student needed. *Id.*

139. The IEP team declined to change the service matrix for related services in speech, PT and OT. D26 at 3. The IEP team noted that the Student's placement at Bancroft was to address his severe and dangerous behaviors, and to focus on stabilizing the Student within the Lindens program. *Id.* The IEP team further noted that related service needs would be reassessed when the Student was demonstrating safer behavior and the IEP team prepared to transition him to a less restrictive environment. *Id.* Ms. Wertz sent the Parents the PWN after the meeting. D26 at 4; Tr. 561-561 (Wertz).

March 2023 Progress Reports

140. Ms. Wertz also did not visit Lindens while she was the Student's case manager, from at least March 2023 until around September 2023. D26; D28; Tr. 497-498, 809-810 (Wertz); Tr. 928-931 (Craig). Ms. Wertz relied on quarterly progress reports, behavior data, behavior plans and staff change information from Lindens. Tr. 415-416, 931 (Wertz). Ms. Wertz would add this information to District progress reports and upload them to "IEP Online". Tr. 987, 1023-1024 (Wertz). During quarterly meetings, the Lindens team would discuss the rates of the Student's target behaviors, interventions, and whether any adjustments had been made. Tr. 419-420 (Wertz).

141. On March 28, 2023, Ms. Esposito assessed the Student's progress toward his September 2022 IEP cognitive, behavior and life skills goals (March 2023 Progress Report). *Compare*, D22 at 16-15, 21-24; D42 at 1-3. The progress report reflected that while the Student still met his first cognitive/language arts goal (comprehensive

questions), he sometimes had focus issues so she continued to work on the goal. D42 at 1; D52 at 4. The Student met the second cognitive/language goal at 90% (wh-questions); averaged 69% in the third cognitive/language goal (yes/no questions); averaged 75% accuracy on his second cognitive/math goal (counting objects with 1:1 correspondence up to 5); mastered a second behavior goal at 100% (First/Then board for two activities); averaged 80% on the first adaptive/self-help goal (household daily living tasks); mastered the second adaptive/self-help goal averaging only 1.8 prompts (washing hands); and that he was making limited progress on his social/emotional goal (self-regulation). D42 at 1-3, 15-18; D52 at 4-14.

142. Also in March 2023, Lindens provided the District with updates on Student's September 2022 IEP fine motor goals and OT services, and this information was included in the District IEP Progress Report. *Compare*, D22 at 17-21; D42 at 4, 6. The Lindens updates noted that the Student received individual and group OT services on a weekly basis, and was typically willing to participate during OT activities within his residence. *Id.* The report further noted that the Student had made "some progress" with his currently goals of independence in his 2 fine-motor goals of self-dressing and increasing emotional regulation for increased participation and independence with play and leisure tasks. *Id.* The report did not include any measurements of the Student's progress toward his IEP fine motor goals. *Id.*

143. As outlined above, the September 2022 IEP no longer included any of the communication goals outlined in the August 2022 draft IEP. *Compare*, D19 at 24-26; D22 at 16-17. However, sometime in March 2023, Ms. Waller (Bancroft SLP) assessed the Student's progress toward communication goals outlined in the August 2022 draft IEP, and this information was added to the District IEP Progress Report. *Compare*, D19 at 24-26; D42 at 9-15; D50 at 1. While the Lindens report did not contain specific measurements of the Student's progress in each goal, Ms. Waller noted that the Student received OPT provided virtually by Ms. Hill, and that the Student had made "small but meaningful progress" toward each of his seven speech and language goals. *Id.*

144. Information contained in Linden's March 2023 Progress Report, as well as OT and SLP updates, were included in the District IEP Progress Report. *Compare*, D19 at 24-26; D42 at 1-4, 6, 9-18; D50 at 1; D52 at 4-14. However, the IEP Progress Report did not contain any progress notes from Ms. Hill. D42. Ms. Hill maintained session notes, which reflect that while she scheduled twelve video therapy sessions with the Student in March 2023, Ms. Waller and the Student did not appear at five of these sessions. D49 at 24-27; Tr. 484 (Hill).

145. On March 30, 2023, Lindens recorded the following reduction in the targeted behaviors of aggression and disruption in response to the December 2022 BIP:

Goal	Admission Baseline (07/20/22 - 10/11/22)	Initial BIP (10/11/22 - 12/28/22)	BIP Update (12/28/22 - 03/30/23)
Aggression	2.13 instances/hr	0.61 instances/hr	0.84 instances/hr
Disruption	0.47 instances/hr	0.12 instances/hr	0.18 instances/hr

D56 at 8.¹³

June 2023 IEP Amendment

146. The IEP team met on June 6, 2023, to amend the Student's IEP for the 2023-2024 school year at Bancroft (June 2023 IEP Amendment). D27. Attendees included the Parents; their attorney; Hayley Haberstroh (Lindens ABA Specialist/Behavior Analyst); Ms. Waller (Bancroft SLP); Ms. Esposito (Bancroft special education teacher); Ms. Emerson (Bancroft Social Worker); Ms. Fioravanti (Bancroft BCBA); Ms. Grilli (Lindens Special Education Supervisor); Ms. Craig (District Special Education Director); Ms. Wertz (District Special Education Director); and the District's attorney. D27 at 5, 31. See *also*, D31 at 1-2.

147. Bancroft shared that the Student had met some of his IEP goals, and that they recommended that certain goals be discontinued to focus on prerequisite skills. D27 at 31.

148. The June 2023 IEP Amendment included the Student's present levels of performance in cognitive skills (language arts and math); social/emotional skills; behavior; adaptive/self-help skills; communication (receptive language, expressive language, pragmatic language, articulation, voice/fluency, and feeding/swallowing); fine motor skills; and gross motor skills. D27 at 9-24. The June 2023 IEP amendment maintained most IEP goals from the September 2022 IEP, but eliminated the cognitive/language arts goal of answering comprehension questions, and the cognitive/math goals of counting and recognizing numerals, and telling time. *Compare*, D19 at 11-13; D27 at 10-11; Tr. 929-930 (Craig).

¹³ D56 at 8 contains a typographical error, in that it references March 30, 2022 rather than March 30, 2023.

149. The June 2023 IEP added three behavior goals to focus on transitions and maintaining appropriate personal space around peers and adults. *Compare*, D19 at 13, 14-15; D27 at 12-13.

150. The June 2023 IEP also added the seven communication goals which were not included in the September 2022 IEP. These goals focused on the skills of intelligibility, sustained voice, L sounds, high frequency words, K/G sounds, and expressive language. *Compare*, D22; D27 at 22-24.

151. The June 2023 IEP amendment included the following service matrix:

Services 07/10/2023 - 09/06/2023							
Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Fine Motor	OT Staff	OT	30 Minutes / 2 Times Weekly	Special Education	07/10/2023	09/06/2023
No	Communication	SLP	SLP	30 Minutes / 3 Times Weekly	Special Education	07/10/2023	09/06/2023
No	Communication	School Personnel	SLP	60 Minutes / 1 Times Weekly	Special Education	07/10/2023	09/06/2023
No	Fine Motor	OT Staff	OT	60 Minutes / 1 Times Weekly	Special Education	07/10/2023	09/06/2023
No	Fine Motor	OT Staff	Special Education Teacher	30 Minutes / 1 Times Weekly	Special Education	07/10/2023	09/06/2023
Special Education							
No	Social/Emotional	Special Education Staff	Special Education Teacher	1 Hours / 1 Times Weekly	Special Education	07/10/2023	09/06/2023
No	Adaptive/Self Help	School Personnel	Special Education Teacher	96 Minutes / 5 Times Weekly	Special Education	07/10/2023	09/06/2023
No	Behavior	School Personnel	Special Education Teacher	96 Minutes / 5 Times Weekly	Special Education	07/10/2023	09/06/2023
No	Cognitive	School Personnel	Special Education Teacher	96 Minutes / 5 Times Weekly	Special Education	07/10/2023	09/06/2023
Total minutes per week of building instructional time available for this student (excluding lunch):				1800 minutes per week			
Total minutes per week student is served in a special education setting:				1800 minutes per week			
Percent of time in general education setting:				0% in General Education Setting			

D27 at 28-29.

152. The June 2023 IEP amendment also contained supplementary aids and services specifying that Bancroft staff would receive 2 days of SLP training per year from Ms. Hill; and 30 minutes per week of SLP consultation with Ms. Hill for Bancroft staff. D27 at 28-29; Tr. 312-313 (Eakle). The IEP team discussed paying for the Student to visit home for two weeks during the summer, and increased family visits to eight 5-day trips per year. D27 at 28, 31. However, Ms. Hill never conducted annual training at Lindens, and was not asked to complete one. P3; Tr. 499 (Hill).

153. Again, the IEP did not include any gross motor skill goals or PT services, as Lindens had no PT available. Tr. 991-992 (Wertz); D27 at 28-29. The June 2023 IEP amendment did not mention any request by the Parents to include parent counseling or training, or recreation/therapeutic recreation for the Student. D27.

154. Regarding the Student's LRE, the June 2023 IEP Amendment noted that the Student was attending a residential facility and not accessing typical peers or a general education setting. D27 at 29. The PWN noted that the last day of school was June 16, 2023, and that the amended IEP goals would run from July 10, 2023 until September 7, 2023, and that ESY would be implemented July 10 – August 18, 2023. D27 at 31. The PWN indicated "[t]he IEP team did not consider or reject other options." *Id.*

155. A PWN dated June 6, 2023, specified that the proposed actions would be initiated on June 7, 2023. D27 at 31-32. Ms. Wertz sent the Parents this PWN. Tr. 562-563 (Wertz).

June 2023 Progress Reports

156. On or around June 19, 2023, Ms. Esposito assessed the Student's progress toward his June 2023 IEP cognitive, behavior and life skills goals (June 2023 Progress Report). *Compare*, D27 at 10-14; D42 at 1-3, 15-18. See *also*, D52 at 15. Ms. Esposito's report reflected that the Student met his second cognitive/language arts goal with 82% accuracy (wh- questions); averaged 78% accuracy his cognitive/writing goal (name stamping); averaged 79% on his second cognitive/math goal (counting objects with 1:1 correspondence up to 5); and mastered an adaptive/self-help goal with 80% accuracy (household daily living tasks). D42 at 1-3, 15-18.

157. Also in June 2023, Jodi Taylor (Lindens OT), assessed the Student's progress on fine motor goals, and this information was included in the District IEP Progress Reports. *Compare*, D27 at 15-18; D42 at 4, 6. Ms. Taylor's report noted that the Student had participated in OT on an individual and group sessions, with a focus on dressing, regulation/leisure activities. *Id.* The report further noted that the Student had 4 daily activities to complete including a breathing task, a fine motor task (such as lacing), a dressing task, and PT exercises. *Id.* Ms. Taylor's report did not include any measurements of the Student's progress toward specific fine motor IEP goals. *Id.*

158. Sometime in June 2023, Ms. Waller (Bancroft SLP) assessed the Student's progress toward his June 2023 IEP communication goals. *Compare*, D27 at 22-24; D42 at 9-15; D50 at 3-4. Ms. Waller's IEP progress report noted that the Student received OPT provided virtually by Ms. Hill and had "maintained progress" toward each

of his seven speech and language goals. D50 at 3-4. The report again did not include any specific measurements of the Student's progress toward his goals. *Id.*

159. The IEP Progress Reports again did not contain any SLP progress notes from Ms. Hill. D42. Ms. Hill's own session notes reflect no notes between June 2023 and November 2023. D49 at 19-22.

August 2023 Progress Reports

160. On or around August 18, 2023, Ms. Esposito (Bancroft special education teacher) again assessed the Student's progress toward his June 2023 IEP goals. *Compare*, D27 at 10-14; D42 at 1-3, 15-18; D52 at 12-15. Ms. Esposito's report reflected that the Student met his first and second cognitive/language arts goals with 86% accuracy (wh- questions and yes/no questions); averaged 57% accuracy in his cognitive/writing goal (marking initial "L" after signature stamp); mastered his cognitive/math goal (counting objects with 1:1 correspondence up to 5); maintained his adaptive/self-help goal (household daily living tasks); was working toward his social/emotional goal (identifying feelings/emotions); averaged 57% accuracy on his first behavior goal (transitions within 5 minutes); and averaged 38% accuracy in his second behavior goal (maintaining appropriate personal space around peers). *Id.*

161. Also in August 2023, Ms. Taylor (Lindens OT), again assessed the Student's progress on fine motor goals. D42 at 4, 6; D52 at 12-15. Ms. Taylor's report noted that the Student had participated in OT on an individual and group sessions, with a focus on dressing, regulation/leisure activities. *Id.* The report further noted that the Student had 4 daily activities to complete including a breathing task, a fine motor task (such as lacing), a dressing task, and PT exercises. *Id.* Ms. Taylor's report did not include any measurements of the Student's progress toward specific fine motor IEP goals. *Id.*

162. Sometime in August 2023, Ms. Waller (Bancroft SLP) assessed the Student's progress toward his June 2023 IEP communication goals. *Compare*, D27 at 10-14; D50 at 5. Ms. Wertz received Ms. Waller's progress notes through Ms. Grilli. D50; Tr. 583-584 (Wertz).

163. Ms. Waller's IEP progress report noted that the Student received individual, group, and consultative speech and language services, received OPT provided virtually by Ms. Hill. D50 at 5. The report further noted that the Student had made "small but meaningful progress" toward each of his seven speech and language goals. *Id.* However, Ms. Waller's report did not include any specific measurements of the Student's progress toward his specific IEP communication goals. *Id.*

164. Ms. Hill's session notes were not included in the IEP progress reports. *Compare*, D42; D49; D52 at 12-15. Ms. Hill's session notes indicate that she scheduled seven video therapy sessions with the Student in August 2023, but that Ms. Waller and the Student did not appear at two of these sessions. D49 at 1-8 Tr. 484 (Hill). However, Ms. Hill cancelled at least one session a month due to travel, lecture or other obligations. Tr. 495 (Hill).

165. Sometime in August 2023, Ms. Wertz noted that the Lindens progress reports did not include progress reports from Ms. Hill, so she began to request them directly from Ms. Hill. Tr. 987-989 (Wertz).

2023-2024 School Year

September 2023 IEP

166. Ms. Eakle became the Student's case manager on or around September 2023. D28. Ms. Eakle received and reviewed quarterly Lindens progress reports for the Student, and used them to complete the Student's IEP goal progress reports. D44; Tr. 358-358 (Eakle). Ms. Eakle acknowledged that no one from the District visited Lindens to ensure the Student was receiving services. Tr. 395-396, 399 (Eakle).

167. On September 7, 2023, the District sent the Parents an invitation to participate in an IEP team meeting on September 12, 2023, to review the Student's current IEP and BIP and create a new IEP. D28. Attendees included the Parents; their attorney; the District's attorney; Ms. Wertz (District Special Education Director); Ms. Sherer (District PT); Ms. Eakle (District BCBA and Special Education Coordinator); Ms. Brewer (District OT); and Ms. Sias (District SLP). D28 at 1; D29 at 1-2. Attendees also included Ms. Price (Lindens OT); Ms. Tompkins (Lindens RBT); Ms. Adkins (Lindens MA); Ms. Grilli (Lindens Special Education Director); Ms. Emerson (Bancroft Social Worker); Ms. Esposito (Bancroft special education teacher); Ms. Waller (Bancroft SLP); and Ms. Fioravanti (Bancroft BCBA). *Id.* The Parents acknowledged that they likely attended this meeting, as they generally attended all meetings with Lindens. Tr. 313 (Father).

168. The IEP team reviewed the Student's present level of progress in his cognitive, social/emotional, behavior, adaptive, communication, and fine motor IEP goals outlined in the August 2023 Bancroft report from Ms. Espino. D28 at 10-15; D52 at 12-15. There was no update on the Student's gross motor skills. D28 at 15-16.

169. The IEP team created an IEP for the period of September 13, 2023 through September 11 2024 (September 2023 IEP). D28. The IEP team eliminated the

cognitive/math goal of counting with 1:1 correspondence up to 5, and replaced it with a math goal involving manipulatives. *Compare*, D27 at 10-11, D28 at 11-12.

170. The IEP team also eliminated the adaptive/self-help goal of completing daily living tasks. *Compare*, D27 at 13-14; D28 at 14-15. All other cognitive, social/emotional and behavior goals remained the same as in the June 2023 IEP Amendment. *Compare*, D27 at 10-13; D28 at 11-14 The Student's remaining adaptive, fine motor and communication goals also remained the same as in the June 2023 IEP Amendment. *Compare*, D27 at 13, 19-24; D28 at 14, 17-21.

171. Again, Lindens had no PT available, and the IEP did not include any gross motor skill goals or PT services. Tr. 991-992 (Wertz); D28 at 25. Further, while the IEP team noted that the Student continued to engage in OT services, and had not met most of his fine motor goals, the IEP discontinued the Student's OT. D28 at 15-17, 25. The IEP noted that the OT structure had changed at Lindens, and specified that the Student would instead receive consultation OT. *Id.* No assessment was conducted to eliminate the Student's ST services, and his fine motor goals remained the same. *Id.*

172. The September 2023 IEP included the following service matrix:

Services 09/13/2023 - 09/11/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Communication	SLP	SLP	30 Minutes / 3 Times Weekly	Special Education	09/13/2023	09/11/2024
No	Communication	School Personnel	SLP	60 Minutes / 1 Times Weekly	Special Education	09/13/2023	09/11/2024
Special Education							
No	Social/Emotional	Special Education Staff	Special Education Teacher	1 Hours / 1 Times Weekly	Special Education	09/13/2023	09/11/2024
No	Adaptive/Self Help	School Personnel	Special Education Teacher	106 Minutes / 5 Times Weekly	Special Education	09/13/2023	09/11/2024
No	Behavior	School Personnel	Special Education Teacher	106 Minutes / 5 Times Weekly	Special Education	09/13/2023	09/11/2024
No	Cognitive	School Personnel	Special Education Teacher	106 Minutes / 5 Times Weekly	Special Education	09/13/2023	09/11/2024

Total minutes per week of building instructional time available for this student (excluding lunch):

1800 minutes per week

Total minutes per week student is served in a special education setting:

1800 minutes per week

Percent of time in general education setting:

0% in General Education Setting

D28 at 25.

173. The IEP offered PT consultation if requested by the OT. D28 at 23, 25. Notes for the September 12, 2023 IEP meeting specified that Lindens staff were taking the

Student to a hospital setting for direct PT services through the Parents' private insurance, but contained no details of the PT services provided. D28 at 30-31. IEP notes do not reflect when this private PT service began, but the Student received PT services at the Children's Hospital of Philadelphia (CHOP). Tr. 993 (Wertz).

174. The September 2023 IEP again included related services specifying that Bancroft staff would receive related services of 2 days per year of SLP training from Ms. Hill for Bancroft staff; 30 minutes per week of SLP consultation with Ms. Hill; and eight 5-day trips per year for the family to visit the Student. D28 at 25-26. IEP notes further specified contracted services with Ms. Hill would continue per the IEP service matrix, and that Ms. Hill would connect with Lindens regarding the date of her onsite training. D28 at 31. However, Ms. Hill never conducted annual training at Lindens, and was not asked to complete one. P3; Tr. 499 (Hill).

175. The September 2023 IEP did not mention any request by the Parents to include parent counseling or training, or recreation/therapeutic recreation for the Student. D28. Regarding the Student's LRE, the IEP again noted that the Student was attending a residential facility, and not accessing typical peers or a general education setting. D28 at 26. There is no indication that the IEP team discussed moving the Student to another LRE, or that the Parents requested a move to another setting. D28 at 28. Rather, the PWN reflected that the Parents requested additional speech and language services. *Id.*

176. A PWN dated September 12, 2023, reflected that IEP team considered and rejected the Parent's request that the Student receive additional speech and language services. D28 at 28. The Parents argued that the Student had decreased in his verbal speech, and that his behavior was related to inability to communicate his needs and wants. *Id.* The IEP team declined the request, noting that the Student's current program was focused on the reduction of severe behaviors and that additional time spent on services would impact his progress in behavior intervention. D28 at 28-29. The Student's special education teacher reported that the Student had increased his use of his AAC device for communication and was doing well communicating with the device. *Id.*

177. The PWN specified that the proposed actions would be initiated on September 13, 2023. D29 at 28-29.

September 2023 BIP

178. Also on September 12, 2023, the IEP team developed a BIP for the Student (September 2023 BIP). D30; Tr. 1021-1022 (Wertz). The BIP identified a single targeted negative behavior of aggression, and indicated that the triggers occurred when the Student was denied access to preferred item/activity/person/location, received academic or nonacademic demands, or received lack of attention. D30 at 1-2. The BIP outlined various intervention strategies, including a structured schedule, staff attention every 2 minutes, verbal prompting and eye contact, clear choices for alternate activities, and avoiding saying “no” in situations of denied access. D30 at 2-4. The BIP also included a de-escalation plan which included reinforcement of independent, appropriate demands the Student made, minimal or simple interverbal exchanges, and reinforcement of de-escalation in the form of non-vocal praise, physical attention, and/or increased space. D30 at 4-5.

179. Similar to the August 2022 BIP, the September 2023 BIP did not reference Dr. Enns’ December 2021 FBA. *Compare*, D21; D30 at 1. Rather, the BIP indicated that a functional analysis was attempted upon the Student’s admission to Lindens, but that results were inconclusive, so a behavior plan was established based on hypothesized functions from direct observation. *Id.* The September 2023 BIP indicated it would be implemented by Linden’s behavior analyst, Ms. Fioravanti, a BCBA. D30 at 1, 5.

November 2023 FBA and BIP Update

180. On November 9, 2023, Lindens recorded the following reduction in the targeted behaviors of aggression and disruption in response to intervention updates in March 2023:

Treatment Goals	Baseline: 7/20/22 - 10/11/22	Initial BIP: 10/11/22 - 12/28/22	BIP Update: 12/28/22 - 3/30/22	Intervention Update: 3/30/23 - 11/9/23
Aggression	2.13 instances / hour	.61 instances / hour	.84 instances / hour	.49 instances / hour
Disruption	.47 instances / hour	.12 instances / hour	.18 instances / hour	.24 instances / hour

D56 at 8.

181. Also in November 2023, Bancroft completed an FBA (November 2023 FBA) after record review and assessments by clinicians on the Student's case: Ms. Haberstroh (Bancroft Behavior Analyst), Ms. Fioravanti (Bancroft BCBA), and Natalie Mandel, Ph.D., BCBA-D (Bancroft Senior Behavior Analyst). D31 at 1-2. Ms. Wertz received this FBA from Lindens. D31; Tr. 585-586 (Wertz). The FBA indicated that since admission to Lindens in July 2022, the Student was tracked for aggression and disruption. D31 at 1. The FBA further indicated that since July 2022, the Student had experienced a 93% decrease in aggressive behavior from baseline rates, and a 94% decrease in disruptive behavior from baseline rates. *Id.*

182. The November 2023 FBA referenced Dr. Enns' December 2021 FBA, which reported that aggression was the most concerning behavior and that it occurred at a high frequency and intensity. D31 at 2. The November 2023 FBA also included results of a Functional Analysis Screening Tool (FAST) and Questions about Behavioral Function (QABF), administered by Lea Enoch and Bernadette Aido, Clinical Associates within the Student's residential program at Lindens who interacted with the Student on a daily/weekly basis. D31 at 3-4. The FBA concluded that the primary functions for the Student's episodes of combined challenging behavior were to escape or avoid tasks and to obtain access to tangibles (particularly electronics). D31 at 5. The FBA noted that the Student's current behavior plan had proven to be effective as evidenced by a significant decrease in identified challenging behaviors. *Id.*

183. The FBA recommended continuing the existing BIP components to address the Student's functions of escape or avoidance of tasks and access to tangibles. D31 at 5. The FBA further addressed the possibility that the Student's behavior resulted from lack of access to attention, noting that "[w]hile not a reliably documented antecedent to problem behavior, BIP components should also address the importance of the Student's access to high quality attention throughout the day, as lack of contact to quality attention for long periods of time could potentially increase the potency of escape from demand and access to tangible when the situations arise.**" D31 at 6.

September–December 2023 – Behavior Data

184. Between September 11, 2023 and December 1, 2023, Bancroft/Lindens maintained Quarterly Progress Notes regarding the Student's behaviors. D44 at 1. Progress notes reflect that the Student's instances of aggression occurred at 0.22 instances per hour (a decrease from September 2022 baseline of 2.13 instances per hour); and disruption occurred at 0.01 instances per hour (a decrease from September 2022 baseline of 0.47 instances per hour). *Id.* During the same period, inappropriate social behaviors occurred at 0.08 instances per hour (a decrease from September 2022 baseline of 0.14 from instances per hour); and latency to transition occurred at

10 min 36s/day (636s) (a decrease from September 2022 baseline of 14.11 minutes/day (851s)). *Id.*

185. Ms. Eakle received this progress report from Lindens, and used it to prepare District IEP progress reports. D44; Tr. 358-359 (Eakle).

December 2023 IEP Amendment

186. The IEP team met on December 6, 2023, to review the IEP and BIP. D32. Attendees included the Parents, and Ms. Wertz (District Special Education Director).¹⁴ D32 at 1.

187. The IEP team did not change any of the September 2023 IEP goals from the September 2023 IEP. *Compare*, D28; D32. Rather, the IEP was amended to add two Student visits home per year, and decrease family visits to the residential placement to six per year (December 2023 IEP Amendment). D32 at 26.

188. Regarding the Student's LRE, the December 2023 IEP Amendment again noted that the Student was attending a residential facility, and was not accessing typical peers or a general education setting. D32 at 24. The PWN dated December 6, 2023, noted that "[t]he team agreed that [Student] is progressing in his goals at the Lindens program and with the team beginning to look at his next placement it is important that we support opportunities for [Student] to generalize across settings. D32 at 26. The PWN indicated that the action would be initiated December 15, 2023. *Id.*

189. There is no indication that the Parents disagreed with the determination that the Student was progressing in goals, and that the IEP team was looking at his next placement. D32 at 26. There is also no indication that the Parents requested a different placement for the Student during the IEP meeting. *Id.* The December 2023 IEP Amendment also did not mention any need by the Student, or request by the Parents, or counseling or training, or recreation/therapeutic recreation for the Student. D32.

December 2023 Progress Reports

190. On December 7, 2023, Ms. Esposito (Bancroft special education teacher) assessed the Student's progress toward his September 2023 IEP cognitive, behavior and life skills goals (December 2023 Progress Report). *Compare*, D43 at 1-3; D28 at

¹⁴ No other attendees are listed. D32.

11-21. Ms. Esposito's report reflected that the Student met his first and second cognitive/language arts goals with 81% accuracy (wh- questions) and 92% accuracy (yes/no questions); averaged 63% accuracy in his cognitive/writing goal (marking initial "L" after signature stamp); averaged 75% on his first cognitive/math goal (counting objects with 1:1 correspondence up to 10); and averaging 54% accuracy in counting to three with manipulatives; was still working toward his social/emotional goal (identifying feelings/emotions); averaged 63% accuracy on his first behavior goal (transitions within 5 minutes); and averaged 50% accuracy in his second behavior goal (maintaining appropriate personal space around peers). *Id.*

191. The record does not contain any updates regarding the Student's progress on his September 2023 IEP fine motor or communication goals. See, e.g., D42; D43; D50. Ms. Hill's session notes were not included in the Lindens progress, but indicate that in November 2023, the Student did not appear at two of four scheduled video therapy sessions. D43; D49 at 17-19 Tr. 484 (Hill). However, Ms. Hill cancelled at least one session a month due to travel, lecture or other obligations. Tr. 495 (Hill).

192. Ms. Eakle received the December 2023 Progress Report from Lindens, and used it to prepare District IEP progress reports. D43; Tr. 355-356 (Eakle).

January 2024 IEP Amendment

193. On December 14, 2023, the District sent the Parents an invitation to attend an IEP team meeting on January 16, 2024, to review the Student's current IEP, and to review present levels of performance in OT, PT and communication to make goal recommendations. D33. That same day, the Parents e-mailed Ms. Wertz asking for a copy of the document she and Ms. Bibby had created in January 2022, and updated in March 2022, for different placement options for the Student. P24 at 3. See *also*, D47. Ms. Wertz also provided the Parents with a copy of the residential research document the District had originally used when first contacting residential placements. P24 at 2; D47.

194. On January 4, 2024, the Parents e-mailed Ms. Wertz, stating that while they understood that the Student had met key behavior goals while at Lindens, they believed he had not been receiving services outlined in his IEP. P24 at 1. The Parents emphasized Linden's minimal programming, and expressed that additional time at Lindens was progressively limiting the Student's ability to progress. *Id.* The Parent's requested a new placement where he could receive all of his required IEP services. *Id.* The Parents indicated that they had been in contact with NECC and Shrub Oak International School, but were open to pursuing other schools if the District had

researched other options. *Id.* The Parents further indicated that while NECC had excellent behavior support and programming, the specialists would not work directly with the Student on OT, PT or communication, and that these issues would need to be addressed. *Id.*

195. Ms. Wertz indicated that around the time she received the Parent's January 4, 2024, e-mail, she "did a lot of things" to find a different educational placement, and had been in contact with NECC and Shrub Oak, as well as Devereux and other residential. P24; Tr. 1100 (Wertz). However, there is no record that Ms. Wertz contacted any additional residential schools after Ms. Craig's initial contacts to residential facilities in January 2022 and March 2022. See, e.g., D24 at 2; D47.

196. The IEP team met on January 16, 2024, and attendees included the Parents; Ms. Eakle (District IEP manager); Ms. Brewer; Audrey Dorshimer¹⁵ (District Physical Therapist); Ms. Wertz; and Alex Ortega¹⁶ (District SLP). D33 at 3; D34. The meeting also included the following participants from Bancroft: Ms. Taylor (Lindens OT); Ms. Grilli (Lindens special education director); Ms. Emerson (Bancroft Social Worker); Ms. Esposito (Bancroft special education teacher); Ms. Waller (Bancroft SLP); and Ms. Fioravanti (Bancroft BCBA). *Id.*

197. The IEP team created an amended IEP for the period of January 22, 2024 through September 11, 2024 (January 2024 IEP Amendment). D33. The IEP maintained the same cognitive goals, social/emotional, and behavior goals contained in the September 2023 IEP. *Compare*, D28 at 11-14, D33 at 10-14.

198. The IEP team noted that the Student currently received PT services at CHOP in Philadelphia, and had received a private PT evaluation at CHOP in December 2023, at the request of the Parents and Bancroft. D33 at 17, Tr. 993, 1041 (Wertz). Ms. Dorshimer reviewed this evaluation in preparation for the IEP meeting, although the IEP did not include this evaluation. D33; Tr. 1041-1042 (Wertz). Nevertheless, the

¹⁵ Ms. Dorshimer holds a Bachelor's of Science in Kinesiology with a health promotion specialization, and Doctorate in Physical Therapy, and is certified as an Educational Staff Associate (ESA) by OSPI to provide PT in schools. Tr. 963-964 (Dorshimer). As of the date of hearing, Ms. Dorshimer had provided PT services for the District for approximately two and a half months, and had not met the Student. Tr. 964 (Dorshimer).

¹⁶ Ms. Ortega holds a Bachelor's in Communication Sciences and Disorders, a Master's in Speech-Language Pathology, is certified as an Educational Staff Associate (ESA) by OSPI to work as a SLP in schools, and holds a SLP license from the Washington State Department of Health (DOH). Tr. 948-949 (Ortega). Ms. Ortega has worked as an SLP for the District as a SLP for the past ten years, and first met the Student in elementary school during the 2018-2019 school year. Tr. 947, 949 (Ortega).

January 2024 IEP Amendment included three gross motor goals focusing on core strength, ball catch and balance. D33 at 18.

199. Ms. Brewer, the District OT, had not conducted any assessments for the Student since 2022, instead relying on current assessments by Bancroft. Tr. 155-156 (Brewer). The IEP team also noted that the Student had not received an OT assessment for fine motor skills since August 2022. D33 at 15, 17. Nevertheless, the January 2024 IEP amendment also added two fine motor goals related to adaptive/self-help. *Compare*, D28 at 17-19; D33 at 16-17.

200. The January 2024 IEP amendment also referenced an update from Ms. Hill dated January 9, 2024, which indicated that the Student was receiving 30 minute, 3 times per week sessions with a local SLP and Ms. Hill by videoconference to facilitate OPT as well as 30 minutes, 1 time per week of Ms. Hill consulting with the local SLP. D33 at 14-15. The IEP included the same seven communication goals outlined in the September 2023 IEP. *Compare*, D28 at 19-21; D33 at 19-21. The IEP also added a communication goal related to feeding. D33 at 15.

201. The January 2024 IEP amendment included the following service matrix:

Services 01/22/2024 - 09/11/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Gross Motor	PT	PT	260 Minutes / 1 Times Monthly	Special Education	01/22/2024	09/11/2024
No	Fine Motor	OT Staff	OT	300 Minutes / 1 Times Monthly	Special Education	01/22/2024	09/11/2024
No	Communication	SLP	SLP	30 Minutes / 1 Times Daily	Special Education	01/22/2024	09/11/2024
Yes	Communication	School Personnel	SLP	30 Minutes / 1 Times Daily	Special Education	01/22/2024	09/11/2024
Yes	Communication	SLP	SLP	30 Minutes / 1 Times Daily	Special Education	01/22/2024	09/11/2024
Yes	Communication	SLP	SLP	60 Minutes / 1 Times Daily	Special Education	01/22/2024	09/11/2024
Yes	Communication	Special Education Staff	SLP	90 Minutes / 1 Times Weekly	Special Education	01/22/2024	09/11/2024
No	Communication	School Personnel	SLP	60 Minutes / 1 Times Weekly	Special Education	01/22/2024	09/11/2024

Special Education							
No	Social/Emotional	Special Education Staff	Special Education Teacher	1 Hours / 1 Times Weekly	Special Education	01/22/2024	09/11/2024
No	Adaptive/Self Help	School Personnel	Special Education Teacher	95 Minutes / 5 Times Weekly	Special Education	01/22/2024	09/11/2024
No	Behavior	School Personnel	Special Education Teacher	95 Minutes / 5 Times Weekly	Special Education	01/22/2024	09/11/2024
No	Cognitive	School Personnel	Special Education Teacher	88 Minutes / 5 Times Weekly	Special Education	01/22/2024	09/11/2024
Total minutes per week of building instructional time available for this student (excluding lunch):				1800 minutes per week			
Total minutes per week student is served in a special education setting:				1800 minutes per week			
Percent of time in general education setting:				0% in General Education Setting			

D33 at 24.

202. The January 2024 IEP amendment again outlined supplementary aids and services, including Bancroft staff receiving 2 days per year of SLP training from Ms. Hill; 30 minutes per week of SLP consultation with Ms. Hill; two visits home per year for the Student during each IEP period; and six family trips per year to visit the Student. D33 at 24, 26. However, Ms. Hill never conducted annual training at Lindens, and was not asked to complete one. P3; Tr. 499 (Hill). The IEP amendment also outlined supplementary aids and services of 6 hours per day of a dedicated aide monitored by a special education teacher. D33 at 24.

203. The January 2024 IEP amendment did not mention any request by the Parents to include parent counseling or training, or recreation/therapeutic recreation for the Student. D33. Regarding the Student's LRE, the January 2024 IEP amendment noted that the Student was attending a residential facility and not accessing typical peers or a general education setting. D33 at 26. However, the IEP team recognized that the Student would be unable to receive all of his IEP services at Lindens as his LRE, specifically his communication, PT and OT needs. D33 at 28; Tr. 1049 (Wertz). Ms. Wertz, the District Special Education Director, recognized that the Student had "outgrown" the Lindens programming and that he needed a LRE which would give him the opportunity to generalize the skills he had gained. Tr. 1049-1050 (Wertz).

204. A PWN dated January 16, 2024, further specified:

[Student] is currently at the Linden's and at Bancroft. The Linden's program's primary focus is on addressing behavioral needs, and they are currently unable to provide or facilitate the communication services the IEP team is recommending. The IEP [sic] agreed to update this IEP in order to have an accurate reflection of the following communication services: 30 min 3x weekly of individual SLP sessions, 60 min 1x weekly of group SLP services, 30 min 1x

weekly of local SLP consultation with Rennee [sic] Hill regarding the OPT program. The IEP team agrees that searching for the next placement will prioritize the ability of the program to address [Student's] behavioral needs as well as his complex needs in the areas of communication, OT and PT.

205. The PWN provided that the proposed actions would be initiated on January 22, 2024. D33 at 28-29. Ms. Wertz sent a copy of the PWN to the Parents. Tr. 568 (Wertz). However, the Student never received the entirety of his communication, OT and PT services from January 16, 2024, until he left for NECC on November 16, 2024. Tr. 1045-1046, 1049 (Wertz); D37.

March 2024 – Behavior Data and Progress Reports

206. On March 1, 2024, Bancroft/Lindens issued a Quarterly Progress Note (March 2024 Quarterly Progress Note) regarding the Student's behaviors. D44. The progress note reflected the following reduction in the targeted behaviors of aggression, disruption, inappropriate social behavior, and latency to transition, since the Student's admission in July 20, 2022:

Goal	Admission Baseline (07/20/2022)	Current Quarter (12/01/2023– 03/01/2023)	Current Quarter Change from Baseline (%)
Aggression	2.13 instances/hr	0.19 instances/hr	91% decrease from baseline
Disruption	0.47 instances/hr	0.01 instances/hr	98% decrease from baseline
Inappropriate Social Behavior	0.14 instances/hr	0.07 instances/hr	50% decrease from baseline
Latency to Transition	14.11 minutes/day (851 s)	5 min 48 s/day (348 s)	59% decrease from baseline

D44 at 1. See *a/so*, D56 at 8.

207. On March 28, 2024, Ms. Grilli (Lindens Special Education Director) assessed the Student's progress toward his cognitive, behavior and life skills goals contained in the January 2024 IEP amendment. *Compare*, D33; D43. Ms. Grilli's report reflected that the Student met his first and second cognitive/language arts goals with 90% accuracy (wh- questions) and 93% accuracy (yes/no questions); averaged 82% accuracy in his cognitive/writing goal (marking initial "L" after signature stamp); averaged 54% on his first cognitive/math goal (counting objects with 1:1

correspondence up to 6 rather than 10); and averaged 50% accuracy in counting to three with manipulatives. D43 at 1-2.

208. The Student averaged 86% in his social/emotional goal (identifying feelings/emotions); mastered his first behavior goal (transitions within 5 minutes); averaged 79% accuracy in his second behavior goal (transitions within 3 minutes); and averaged 86% accuracy in his third behavior goal (maintaining appropriate personal space around peers). D43 at 2-3. The Student also averaged 82% in his adaptive/self-help goal (sequencing events). *Id.*

209. The record does not contain any updates regarding the Student's progress on his September 2023 IEP fine motor or communication goals. See, e.g., D43; D50. Ms. Hill's session notes were not included in the Lindens progress report, but indicate that between January 4, 2024 and March 29, 2024, the Student did not appear at nine of twenty-two scheduled video therapy sessions. D43; D49 at 13-15, 24-27 Tr. 484 (Hill).

210. Ms. Eakle received this progress report from Lindens, and used it to prepare District IEP progress reports. D43; Tr. 355-356 (Eakle).

April 2024 – Behavior Data and BIP

211. On April 4, 2024, Lindens recorded the following reduction in the targeted behaviors of aggression and disruption in response to the November 2023 FBA and BIP updates:

Treatment Goals	Baseline: 7/20/22 - 10/11/22	Initial BIP: 10/11/22 - 12/28/22	BIP Update: 12/28/22 - 3/30/22	Intervention Update: 3/30/23 - 11/9/23	BIP Update: 11/9/23 - 4/04/24
Aggression	2.13 instances / hour	.61 instances / hour	.84 instances / hour	.49 instances / hour	.17 instances / hour
Disruption	.47 instances / hour	.12 instances / hour	.18 instances / hour	.24 instances / hour	.02 instances / hour

D56 at 8.

212. Also on April 4, 2024, Bancroft updated the Student's behavior plan (April 2024 BIP). D35. The behavior plan was authored by Ms. Haberstroh (Behavior Analyst), and would be implemented by Ms. Mandel (BCBA-D). *Id.* The updated behavior plan

identified the targeted negative behaviors of aggression, disruption, inappropriate social behavior, latency to transition, and episodes of combined challenging behavior. *Id.* The behavior plan identified new interventions of hierarchical prompting; structured schedule; DRA; non-contingent reinforcement; de-escalation; and planned ignoring, response prevention and redirection. D35 at 1-4

May 2024 – NECC Visit

213. On April 18, 2024, the Parents informed the District that they had had two interviews with NECC, and that they believed NECC would be a great fit for the Student, although they would have to figure out the speech component. P26; Tr. 1101-1102 (Wertz). The Parents informed the District they had booked airline tickets for an in-person visit on May 6 and 7, 2024, and requested that the District reimburse the visit, indicating that they used a 2-for-1 airline discount code to reduce the cost. *Id.* Ms. Wertz spoke with the Parents about this visit, and expressed that a virtual tour could accomplish the same result. Tr. 1104-1105 (Wertz).

214. On May 6 and 7, 2024, the Parents visited NECC in person to determine whether it would be an appropriate placement for the Student. P26. The Parents were aware that NECC would not provide direct SLP services for the Student, but hoped to assess the school to determine if it would be appropriate. Tr. 1182-1183 (Father). The District did not reimburse the Parents for this visit. Tr. 1105-1106 (Wertz).

June–July 2024 – Progress Reports

215. On June 24, 2024, Ms. Waller (Bancroft SLP) assessed the Student’s progress toward the communication goals outlined in the January 2024 IEP amendment. *Compare*, D33; D45. Ms. Wertz received these progress reports from Lindens. Tr. 580-581 (Wertz).

216. Ms. Waller’s progress report noted that the Student averaged 40% accuracy on his first goal (OO, OH or consonant W); made progress on his second goal (sustaining AH for 10 seconds); averaged 50% on his third goal (high frequency words); averaged 50% on his fourth goal (producing consonants K and G); made progress on his fifth goal (producing 3 or more words using verbal and/or AAC); averaged 30% accuracy on his sixth goal (planning and sequencing 3+ syllable shapes); and was working on his feeding goal (5 or less prompts to decrease food stuffing. D45 at 1; D33 at 15, 19-20.

217. Ms. Hill’s session notes were not included in the Ms. Waller’s progress reports, but indicate that the Student did not appear at two of eight scheduled video therapy

sessions in April 2024. *Compare*, D45; D49 Tr. 484 (Hill). The record does not contain any oral motor session updates from Ms. Hill after April 2024. D49.

218. On July 18, 2024, Megan Fitzpatrick¹⁷ at Bancroft assessed the Student's progress toward the cognitive, behavior and life skills goals outlined in his January 2024 IEP amendment. *Compare*, D33, 4-7; D43, 10-13. Ms. Fitzpatrick's report reflected that the Student continued to work on his first and second cognitive/language arts goals to maintain mastery (wh- questions and yes/no questions); averaged 80% accuracy in his cognitive/writing goal (marking initial "L" after signature stamp); averaged 62% on his first cognitive/math goal (counting objects with 1:1 correspondence up to 6 rather than 10); and averaged 42% accuracy in counting to three with manipulatives. D43 at 4-5.

219. The report reflected that because the Student had mastered his first behavior goal (transitions within 5 minutes), he had been attending community outings such as going to the airport, trampoline park and the movies, and had also begun transitioning to the Bancroft for school, group sessions, and gym. D43 at 6. The report further reflect that the Student averaged 87% in his social/emotional goal (identifying feelings/emotions); averaged 66% accuracy in his second behavior goal (transitions within 3 minutes); and had mastered his third behavior goal (maintaining appropriate personal space around peers). D43 at 5-6. The Student averaged 77% in his adaptive/self-help goal (sequencing events). D43 at 7.

220. Lindens did not provide OT or PT services, and the record does not contain any updates regarding the Student's progress on the fine motor or gross motor goals outlined in the January 2024 IEP amendment. See, e.g., D43; D33 at 16-18.

221. Ms. Eakle received this progress report from Lindens, and used it to prepare District IEP progress reports. D43; Tr. 355-356 (Eakle).

2024-2025 School Year (Bancroft and Transition to NECC)

August 2024 IEP Amendment

222. On August 1, 2024, the District sent the Parents an invitation to attend an IEP team meeting on August 5, 2024, to address the Student's change in placement for school services to the Bancroft school, a less restrictive placement. D37. At that time, the Student had attended Bancroft school during a 30 day initial assessment period.

¹⁷ There is no indication of Ms. Fitzpatrick's role at Bancroft, but prior assessments were completed by Ms. Esposito (Bancroft special education teacher) and Ms. Grilli (Lindens Education Supervisor). D43.

D37 at 1; Tr. 1047 (Wertz). Meeting attendees included the Parents; Ms. Wertz (District Special Education Director); Ms. Ortega (District SLP); and Ms. Dorshimer (District PT). D37 at 3; Tr. 319 (Father); Tr. 577 (Wertz); Tr. 952 (Ortega); Tr. 968 (Dorshimer).

223. The IEP team noted that the Student was receiving behavioral intervention support from BCBAs and ABAs. D37 at 6. The IEP team further noted that the Student was accessing his school day of instruction and services at Bancroft while residing at Lindens. D37 at 22. While not mentioned by the IEP team, as outlined above, Lindens had updated the Student's BIP in April 2024. D35.

224. The IEP team created an amended IEP for the period of August 12, 2024 through September 12, 2024 (August 2024 IEP Amendment). D37. The August 2024 IEP Amendment contained the same cognitive, social/emotional, behavior, adaptive, communication, small motor and gross motor goals as the January 2024 IEP amendment. *Compare*, D33 at 10-13, 15-20; D37 at 7-10, 12-17.

225. The August 2024 IEP Amendment included the following service matrix:

Services 08/12/2024 - 09/11/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Communication	SLP	SLP	60 Minutes / 1 Times Weekly	Special Education	08/12/2024	09/11/2024
No	Gross Motor	PT	PT	20 Minutes / 1 Times Weekly	Special Education	08/12/2024	09/11/2024
No	Fine Motor	OT Staff	OT	30 Minutes / 2 Times Monthly	Special Education	08/12/2024	09/11/2024
Special Education							
No	Social/Emotional	Special Education Staff	Special Education Teacher	1 Hours / 1 Times Weekly	Special Education	08/12/2024	09/11/2024
No	Adaptive/Self Help	School Personnel	Special Education Teacher	108 Minutes / 5 Times Weekly	Special Education	08/12/2024	09/11/2024
No	Behavior	School Personnel	Special Education Teacher	113 Minutes / 5 Times Weekly	Special Education	08/12/2024	09/11/2024
No	Cognitive	School Personnel	Special Education Teacher	108 Minutes / 5 Times Weekly	Special Education	08/12/2024	09/11/2024

Total minutes per week of building instructional time available for this student (excluding lunch):

1800 minutes per week

Total minutes per week student is served in a special education setting: 1800 minutes per week

Percent of time in general education setting:

0% in General Education Setting

D37 at 21.

226. The August 2024 IEP Amendment again included supplementary aids and services specifying that Bancroft staff would receive 30 minutes per week consultation with Ms. Hill for a Bancroft SLP to deliver OPT treatment throughout the therapy

sessions; 2 days per year of training from Ms. Hill to support the Student's OPT; two trips home for the student per year; six 5-day family trips per year to visit the Student; and OT consultation of 30 minutes per month. D37 at 21-22. The IEP also noted that the Student visits home would support the generalization of skills across environments and provide the Student with the opportunity to prepare for his next placement. D37 at 22.

227. The August 2024 IEP amendment did not mention any request by the Parents to include parent counseling or training, or recreation/therapeutic recreation for the Student. D37. Regarding the Student's LRE, the IEP Amendment provided that the Student was currently accessing a school day of instruction while residing in a placement facility. D37 at 22. However, the IEP team again recognized that the Bancroft school would not be able to provide all of the IEP services outlined in the IEP, including communication, OT and PT services. Tr. 1045-1049 (Wertz). The Student had also recently been accepted to NECC. Tr. 1048 (Wertz). Rather than create a new IEP prior to the Student's admission to NECC, the IEP team decided to outline the services previously recommended in the January 2024 IEP Amendment. *Id.*; D37 at 35.

228. A PWN dated August 5, 2024, noted that the IEP documented the services outlined and recommended in the Student's January 2024 IEP Amendment:

The IEP team has agreed to move forward with the amended related services and documented the previously recommended services. The IEP team agrees that [Student's] needs are complex and unique, and want to ensure that recommendations are documented as progress is monitored and the IEP team makes decisions on delivery of services. We have documented both the requested amendment and the previous services in order the ensure the team has a clear picture to consider as [Student] has changes [sic] school placements. The team is in agreement to try this delivery of services in this new placement, assess as a team, monitor progress, and meet as an IEP team.

D37 at 25.

229. The PWN specified that the proposed actions would be initiated August 12, 2024. D37 at 24-25. Ms. Wertz sent the Parents the PWN. Tr. 577 (Wertz).

August 2024 Bancroft Pre-Admission Meeting

230. On August 13, 2024, Bancroft staff and the District met to discuss the Student's transition to Bancroft school full time on September 4, 2024. D38 at 2. Meeting attendees included Ms. Haberstroh (Lindens Behavior Analyst) and Jessica

Hiller (Lindens Clinical Director), as well as Bancroft staff including behavior analysts, an SLP, a teacher, a nurse and a school psychologist. D38 at 1.

231. Meeting notes indicated that the Student would receive 1:1 in education, and that his IEP goals, and OT, SLP and PT needs would be assessed during his first 30 days at Bancroft. D38 at 2. Notes further indicate that the Bancroft would implement the same behavior program plan the Student had at Lindens. *Id.* The IEP team recommended 20 minutes of PT once per week; 30 minutes twice per month of OT and 30 minutes per month of integrated program support; and 60 minutes per week in SLP and 30 minutes per month consultation integrated into the classroom schedule. D38 at 3. The Parents requested the Student's private speech and PT services to collaborate with the Student's education team at Bancroft, and that the social worker will obtain necessary authorizations. *Id.*

232. Meeting notes do not list the Parents or any District employees as attendees, but Ms. Wertz and the Parents attended this meeting by Zoom. D38 at 1; Tr. 586-587 (Wertz). Bancroft later sent a copy of the sign-in sheet and notes. Tr. 586-587 (Wertz). There is no indication that the Parents received a copy of the meeting notes.

233. In August 2024, the Student began attending equine therapy classes at Hearts Therapeutic Riding Center, paid for by the Parents. P69 at 1-2. He continued these sessions until November 2024. *Id.* At some point, the Parents discussed with Ms. Wertz the possibility of including equine therapy in the Student's 2024 IEPs, and the District reimbursing them for this expense. Tr. 1247 (Father). The IEP team never discussed or included this service in any 2024 IEP. *Compare*, D28; D37; D53. *See also*, Tr. 1059-1060 (Wertz).

October 2024 IEP

234. On September 9, 2024, the District sent the Parents an invitation to attend an IEP team meeting on October 4, 2024, to review the current IEP. D53. Prior to this meeting, Bancroft staff provided Ms. Wertz an assessment of the Student's functional living skills, OT, PT and SLP assessments, and data collection they had collected over their initial placement period, as well as the Lindens quarterly report. Tr. 579-580 (Wertz). Bancroft had used this information to draft IEP recommendations for the Student while he was admitted to Bancroft. Tr. 580 (Wertz). The record does not contain any progress reports after June and July 2024. *See, e.g.*, D43, D45.

235. Meeting attendees included the Parents and Ms. Wertz (District Special Education Director), while other invited attendees included Karent Eng (OT); Ms.

Denison (Skybound); Ms. Emerson (Bancroft Social Worker); Ms. Hill (contracted SLP); Abigail Murphy (listed as "Other"); Jack Clough-Medora (listed as "Other"); Kristen Regensberg (PT); Marijke Goosens (School Psychologist); Edith Giberson (Social Worker); Trish Tice (Bancroft Special Education Teacher); Michelle Frankenthaler (SLP); and Eliza Fayer (Behavior Analyst). D53 at 4-5.

236. The IEP team created an amended IEP for the period of October 4, 2024 through October 3, 2025 (October 2024 IEP). D53. The IEP noted that the Student had been participating in music, art and physical education classes at Bancroft, and had enjoyed these classes. D53 at 10.

237. The IEP contained the same cognitive, social/emotional, behavior, adaptive, small motor, gross motor and communication goals as the August 2024 Amended IEP. *Compare*, D37 at 7-10, 12-17; D53 at 11-14, 18-24. The IEP also included a new behavior goal to work on transitions. D53 at 14.

238. The October 2024 IEP included the following service matrix:

Services 10/04/2024 - 10/03/2025

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Communication	SLP	SLP	60 Minutes / 1 Times Weekly	Special Education	10/04/2024	10/03/2025
No	Gross Motor	PT	PT	20 Minutes / 1 Times Weekly	Special Education	10/04/2024	10/03/2025
No	Fine Motor	OT Staff	OT	30 Minutes / 2 Times Monthly	Special Education	10/04/2024	10/03/2025
Special Education							
No	Social/Emotional	Special Education Staff	Special Education Teacher	1 Hours / 1 Times Weekly	Special Education	10/04/2024	10/03/2025
No	Adaptive/Self Help	School Personnel	Special Education Teacher	108 Minutes / 5 Times Weekly	Special Education	10/04/2024	10/03/2025
No	Behavior	School Personnel	Special Education Teacher	113 Minutes / 5 Times Weekly	Special Education	10/04/2024	10/03/2025
No	Cognitive	School Personnel	Special Education Teacher	108 Minutes / 5 Times Weekly	Special Education	10/04/2024	10/03/2025

Total minutes per week of building instructional time available for this student (excluding lunch):

1800 minutes per week

Total minutes per week student is served in a special education setting:

1800 minutes per week

Percent of time in general education setting:

0% in General Education Setting

D53 at 28.

239. The October 2024 IEP again included supplementary aids and services specifying that Bancroft staff would receive 30 minutes per week consultation with Ms.

Hill for Bancroft SLP to deliver OPT treatment throughout the therapy sessions; 2 days per year of training from Ms. Hill to support the Student's OPT; two trips home for the student per year; six 5-day family trips per year to visit the Student; and 30 minutes OT consultation per month. D53 at 28-29.

240. The June October 2024 IEP amendment did not mention any request by the Parents to include parent counseling or training, or recreation/therapeutic recreation for the Student. D53. Regarding the Student's LRE, IEP noted that the Student was accessing a school day of instruction at Bancroft, while residing at Lindens. D53 at 29. A PWN dated October 4, 2024, indicated that the IEP team rejected new goals, and modified service minutes in the areas of communication, PT and OT proposed by the Bancroft team. D53 at 31. The PWN explained the reason for the rejection as follows:

The team has recently learned that [Student] has been accepted to a new placement and will be moving November 19, 2024. Parents and the rest of the IEP [sic] have agreed to continue with the current goals and services at this time pending his upcoming transition. Progress report June 2024 from Lindens, indicates that [Student] has mastered or was close to mastery on some of his goals, however, with the transition to the Bancroft school and another transition, the team agrees continuing to work on these goals and address generalization and maintenance will best support [Student] in preparing for his move.

Id. The PWN further specified that the proposed actions would be initiated October 5, 2024. D53 at 31. Ms. Wertz sent the Parents the PWN. Tr. 577-578, 1047 (Wertz).

October 2024 – BIP and ERP

241. Also on October 4, 2024, the IEP team developed a BIP for the Student (October 2024 BIP). D54. The BIP referenced an FBA, but did not indicate when the FBA was completed. *Id.* The BIP identified the targeted negative behaviors as follows: "Any instance or attempt of [Student] hitting, headbutting, scratching, hair pulling, biting, choking, throwing objects at a person, or using objects as a weapon." D54 at 1.

242. Similar to the November 2023 BIP, the October 2024 BIP indicated that the Student's triggers occurred when the Student was denied access to preferred item/activity/person/location, received academic or nonacademic demands, or received lack of attention. *Compare*, D30 at 1-2; D54 at 2.

243. The October 2024 BIP outlined various intervention strategies, including hierarchical prompting and eye contact; enthusiastic praise and preferred verbal or

physical interaction; prolonged staff attention on an average of every 15 minutes; and alternative replacement behavior to teach desired behavior and maintain consequences. D54 at 3-5. The BIP also rated behaviors as Level 1 through Level 5, and included supports for each level of behavior, and included a crisis and recovery plan when the Student was unresponsive to de-escalation strategies. D54 at 6-7.

244. Ms. Eakle continued to receive progress reports from Lindens, and added this information into the Student's progress reports. D42; Tr. 353-355 (Eakle).

November 2024 Discharge Summary

245. On November 12, 2024, Lindens conducted training on the BIP with the Student's BA and team members at NECC. D56 at 10.

246. On or around November 16, 2024, the Student discharged from Bancroft to transfer to the NECC Severe Residential Program. P60 at 1, 9; D56 at 10; Tr. 321 (Father); Tr. 992 (Wertz).

247. Also on November 16, 2024, Lindens issued a Behavioral Discharge Summary (November 2024 Discharge Summary), which outlined the results of an attempted August 2022 FBA, and a completed November 2023 FBA. D56 at 5-6. The summary also contained a table reflecting that since admission to Lindens on July 20, 2022, the Student's targeted behavior of aggression had decreased by 95%, and his targeted behavior of disruption had decreased by 86%:

Treatment Goals	Baseline: 7/20/22 - 10/11/22	Initial BIP: 10/11/22 - 12/28/22	BIP Update: 12/28/22 - 3/30/22	Intervention Update: 3/30/23 - 11/9/23	BIP Update: 11/9/23 - 4/04/24	Current BIP: 4/04/24 - Present	Change from Baseline
Aggression	2.13 instances / hour	.61 instances / hour	.84 instances / hour	.49 instances / hour	.17 instances / hour	.11 instances / hour	95% decrease
Disruption	.47 instances / hour	.12 instances / hour	.18 instances / hour	.24 instances / hour	.02 instances / hour	.06 instances / hour	86% decrease

D56 at 8.

January 2025 – NECC Assessment and BIP

248. On or around January 31, 2025, NECC completed an assessment of the Student's current skill levels and identified academic, social/behavior, behavior, communication, self-help, vocational, OT/PT/APE (adaptive physical education), and community/recreation/leisure goals (January 2025 NECC Assessment). P60 at 10-17. NECC also created a BIP for the Student. P60 at 2-9 (January 2025 NECC BIP).

249. The January 2025 BIP identified two targeted behaviors: aggression (actual or attempted biting, grabbing, hitting, slapping pushing, kicking or charging at another person); and head-directed self-injury (on a floor, wall or another object from a distance of 3 inches or greater, or hitting head with his hand from a distance of 3 inches or greater). P60 at 2, 4.

250. The BIP outlined various intervention strategies, including teaching function-based alternative (replacement) behavior, and reinforcing behaviors with access to social attention, edibles and sensory breaks. P60 at 3, 5. For the targeted behavior of aggression, the BIP identified consequences of reinforcement for alternative responses, redirection, breaks from work, protective movement, and exclusionary time out. P60 at 3. For the targeted behavior of head-directed self-injury, the BIP identified consequences of reinforcement for alternative responses, redirection and breaks from work. P60 at 6.

251. Regarding the Student's cognitive/academic skills, the January 2024 NECC Assessment reflected that the Student was working on answering WH questions related to texts that are read aloud; stamping his name in a designated location; answering yes/no questions; and counting quantities up to 10 items. P60 at 10. The assessment further reflected that the Student was able to appropriately respond yes or no to questions related to his preference for food items, beverages, locations, and activities; and was able to stamp his name along a line following an "x" or "\" notation. *Id.*

252. The January 2025 NECC Assessment outlined the following academic goals for the Student:

Calendar Skills: By 1/31/2026, when given a calendar or shown features of a calendar, [Student] will identify calendar features and answer questions related to a calendar from 0% accuracy to 80% accuracy as measured by curriculum-based assessments.

Follow a Schedule: By 1/31/2026, when given a visual schedule with 2 or more activities with removable velcro pictures for each activity on his schedule, [Student] will follow his schedule and transition between activities by completing each activity outlined on his schedule and independently removing the picture that represents each activity from 0% accuracy to 90% accuracy.

Tell Time: By 1/31/2026, when given a time on a digital clock, [Student] will identify the time (vocally or with his AAC device) from 0% accuracy to 80% accuracy as measured by curriculum-based assessments.

Listening Comprehension: By 1/31/2026, when given a text/article from News2You, [Student] will independently answer listening comprehension questions while listening to the audio and participate in activities related to the articles he has listened to from 0% accuracy to 80% accuracy as measured by curriculum-based assessments.

Vocabulary: By 1/31/2026, when given a vocabulary word (frequently requested/commonly used) on a flashcard, [Student] will articulate additional details (vocally or with his AAC device) to increase his vocabulary repertoire from 0% accuracy to 80% accuracy as measured by curriculum-based assessments.

Follow Directions: By 1/31/2026, when given a one or two step directive, [Student] will follow directions from 50% accuracy to 100% accuracy as measured by curriculum-based assessments.

P60 at 10-11.

253. The January 2025 NECC Assessment reflected that the Student produced words containing initial /k/ with 0% independence and in 50% of opportunities when given visual and verbal models; produced words with initial /g/ with 20% independence and 40% accuracy when given visual and verbal models; produced words with initial /n/ independently with 20% accuracy and 40% accuracy when given visual and verbal models; and produced 3 out of 4 target vowels (oo, ah, oh, ee) independently. P60 at 12. The assessment also reflected that the Student produced CV1CV2 syllable shapes with 50% accuracy; C1V1C2V2 syllable shapes with 40% accuracy; and frequently used words with 40% independence and accuracy. *Id.*

254. The assessment further noted that the Student used single words and two word phrases vocally to request needed and desired items, actions, and people; primarily used single words when asked to comment on a picture scene or action in the environment; and benefitted from cues to increase his utterance length to two to three word phrases and short sentences. P60 at 13. When asked to repair his utterance

when not understood, the Student successfully repaired by repeating his utterance in 50% of opportunities and through using his AAC device in 60% of opportunities. *Id.*

255. The NECC assessment outlined the following communication goals for the Student:

Speech Sound Production: By 1/30/2026, [Student] will produce target sounds (K/G, OO/OH, EE, W, N) in syllables and words increasing from 30% accuracy and independence to 60% accuracy and independence as measured by monthly SLP probe.

Syllable Production: By 1/30/2026, [Student] will produce target syllable shapes (e.g. CV1CV2, C1V1C2V2, etc.) containing sounds in his repertoire improving from 45% accuracy to 75% accuracy with 2 different syllable shapes as measured by monthly SLP probe.

Speech Practice of High Frequency Words: By 1/30/2026, [Student] will increase his production of targeted high frequency words from 40% to 70% accuracy as measured by monthly SLP probe for 20 target words.

Expressive Language: By 1/30/2026, [Student] will use noun phrases, verb phrases, or simple sentences containing 2-3 words in length to answer questions, comment and request increasing from 20% independence to 80% independence for 2 consecutive weeks.

Intelligibility: By 1/30/26, when a communicative partner states they don't understand an utterance, [Student] will successfully repair unintelligible speech using 2 strategies (e.g., re-state more clearly, use AAC, provide more information, etc.) increasing from 55% to 80% of opportunities for 2 consecutive weeks.

P60 at 13.

256. In the area of self-help skills, the January 2025 NECC Assessment reflected that Student was working on a shower sequence, a toothbrushing sequence, and a wiping sequence, and that he had made some initial progress on his shower and toothbrushing sequence. P60 at 13. The assessment identified the following self-help goals:

Showering: By 1/31/2026, when given an initial instruction to take a shower, [Student] will take a shower increasing his independence with verbal prompts in showering from 29% independence with a shower sequence to 100% independence with a shower sequence as measured by 3 consecutive direct observation trials.

Toothbrushing: By 1/31/2026, when given an initial instruction to brush his teeth, [Student] will brush his teeth increasing his independence with verbal prompts in toothbrushing from 54% independence with a toothbrushing sequence to 100% independence with a toothbrushing sequence as measured by 3 consecutive direct observation trials.

Wiping: By 1/31/2026, when given an initial instruction to wipe his bottom, [Student] will wipe himself after using the bathroom and in practice sessions from 14% independence for a wiping sequence to 100% independence for a wiping sequence as measured by 3 consecutive direct observation trials.

Maintain Environment: By 1/31/2026, when given an initial instruction to clean and organize his environment (bedroom, classroom, work area, etc.), [Student] will maintain his environment by independently making his bed, picking up items off of his floor, cleaning up his desk/table from 60% independence to 100% independence as measured by 3 consecutive direct observation trials.

Snack and Meal Prep: By 1/31/2026, when given a recipe, [Student] will follow a recipe while increasing independence from 0% accuracy 80% accuracy, increasing by 4 recipes, as measured by curriculum-based assessments.

Maintain Privacy: By 1/31/2026, when given a situation where privacy is critical (bedroom, bathroom, etc.), [Student] will identify if the location is private or public and the steps to take to maintain his own privacy in contrived scenarios and in naturally occurring contexts from 66% accuracy to 100% accuracy as measured by curriculum-based assessments.

Health and Relationships: By 1/31/2026, when given curriculum related to social skills and relationships, [Student] will demonstrate an understanding of appropriate interactions with various people including family, peers, and community members from 0% accuracy to 100% accuracy as measured by curriculum-based assessments.

P60 at 14.

257. In the area of OT, PT and APE skills, the January 2025 NECC Assessment reflected that Student presented with “overall strength and balance deficits when attempting to participate in many gym activities.” P60 at 15. The assessment noted that the Student could benefit from participating in more regular daily activities such as stretching, simple mobility tasks like high marching, as well as body weight exercises like holding various positions. *Id.* The assessment further noted that the

Student demonstrated difficulty putting on socks and fastening clothing; had difficulty pacing at meals; and had expressed interest in adding to computer skills. P60 at 15-16.

258. The assessment identified the following OT/PT/APE goals:

Core and Postural Strength and Stability: By 1/30/2026 when given an exercise program and verbal instructions and/or prompting to complete exercises, [Student] will complete core and postural strengthening activities from the current baseline of 30% to 80% of programmed opportunities across 2 consecutive weeks with at least 5 activities as measured by staff data collection.

Daily Exercise Participation: By 1/30/2026 when given a written/picture program and verbal instructions and/or prompting to complete exercises, [Student] will complete a series of 3 (variable) exercises from the current baseline of 1/3 opportunities to 100% of presented opportunities across 2 consecutive weeks as measured by staff data collection.

Put on Socks: When given an initial instruction to put on socks, [Student] will put on his socks to improve independence in dressing from current baseline of 5/12, 11/12 and 7/12 steps to 12/12 steps in 2 consecutive direct observation trials with 1 type of sock (ankle length).

Fasteners: When given a practice vest with a large zipper, [Student] will engage and pull up a zipper improving independence in dressing from current baseline of 2/6 and 3/6 steps in the sequence to 6/6 steps in the sequence measured in 3 consecutive direct observation trials.

Pacing at Meals: Given a visual support, [Student] will increase the percentage of meals eaten at an appropriate pace to improve safety at meals from current baseline of 0% of meals to 80% of opportunities for 1 week during direct observation of meals.

Computer Skills: Given a word processing skill, [Student] will complete the skill in 80% of opportunities to increase independent use of technology from the current baseline of 0% of opportunities to 80% of opportunities as measured in 2 consecutive, direct observation sessions with 1 skill (Printing a document).

P60 at 15-16.

259. In the area of community, recreation and leisure skills, the January 2025 NECC Assessment reflected that the Student enjoyed watching videos on his iPad and looking at his architecture plans, and demonstrated an interest to go on drives into the community.

P60 at 17. However, the assessment further noted that the Student but would benefit from learning community rules and responding to "stop" to keep himself safe. *Id.* The assessment identified the following goals:

Leisure Sampling: By 1/31/2026, when presented with a leisure opportunity, [Student] will engage with novel leisure items, with or without teacher assistance, increasing his leisure repertoire from 2 activities to 8 total activities.

Respond to Stop: By 1/31/2026, when given an initial instruction to "stop", [Student] will respond to a "stop" cue with no more than 1 additional verbal prompt from 40% accuracy from 5 trials to 100% accuracy from 5 trials as measured by 3 consecutive direct observation trials.

Follow Community Rules: By 1/31/2026, when given a situation in the community, [Student] will follow his community rules (wait in line, maintain personal space, pay for items, leave when activity is over, etc.) with no more than 1 additional verbal prompt per rule from 20% accuracy to 100% accuracy as measured by data collected over 3 consecutive sessions.

Accessing Locations: By 1/31/2026, when presented with an opportunity to engage in an activity in the community or around the school, [Student] will access locations free of challenging behavior from 0% of opportunities to 80% of opportunities as measured across 3 consecutive systematic observations, increasing by 2 locations per quarter.

P60 at 17.

260. The Parents believed that the January 2025 NECC Assessment accurately reflected the Student's skill levels at the time he transitioned to NECC. P60; Tr. 1255-1257 (Father).

January 2025 – IEP Reevaluation Waiver Request

261. The January 2022 IEP Reevaluation specified that the next triennial reevaluation was due on January 18, 2025. D8 at 5. On January 7, 2025, the District sent the Parents a notice informing them they were proposing to waive the Student's current reevaluation review due on January 18, 2025, and establish a new reevaluation review date of January 7, 2028. P61; Tr. 1249 (Father).

262. The Student did not receive an IEP reevaluation on or before January 18, 2025, as he was transitioning to NECC. Tr. 129 (Brewer); Tr. 222 (Sherer); Tr. 1001-1005 (Wertz). The Parents did not sign the waiver or agree to a delay in reevaluation. Tr.

1004 (Wertz); Tr. 1249 (Father). At the Parents' request, the District has changed the reevaluation timeline to one year. Tr. 1003 (Wertz). As of hearing, the Parents had requested the District complete a reevaluation no later than 90 days after the triennial reevaluation date, January 18, 2025, which is at least as comprehensive as the 2022 reevaluation. Tr. 1005-1007 (Wertz).

263. The Student has remained at NECC since his admission in November 2024. P60 at 9. The District has participated in an IEP meeting with NECC and the Parents, but as of hearing, the District also had not yet issued a PWN related to the scope of the reevaluation, completed a triennial IEP reevaluation, or completed an IEP. P61; Tr. 590-592, 1003-1007 (Wertz).

Expert Witness Opinions

Skybound Therapies (BCBA)

264. At hearing, the Parents presented BCBA expert witnesses, Risca Solomon¹⁸ and Sarah Denison,¹⁹ from Skybound Therapies Ltd. (Skybound), an independent behavior consultation organization. Tr. 680-681, 683 (Solomon); Tr. 734, 760 (Denison). Skybound had previously worked with Ms. Hill to implement speech therapy services for students which had both apraxia and dysarthria to help them communicate. Tr. 1182 (Father).

265. Sometime in April 2024, the Parents contacted Skybound to independently assess the Student. Tr. 681 (Solomon); Tr. 1182 (Father). Ms. Solomon and Ms. Denison initially interviewed the Parents, reviewed the Student's educational and medical records, conducted Zoom meetings with the family, and reviewed videos of the Student. Tr. 680-681, 683 (Solomon); Tr. 734, 760 (Denison).

266. In late May 2024, Ms. Solomon and Ms. Denison informally assessed the Student in-person with his family over a period of 2 days while the family vacationed in

¹⁸ Ms. Solomon is a BCBA, holds a Master's degree in "Positive Approaches to Challenging Behavior", is trained in ABA, and is certified in TalkTools Level 4. P66; Tr. 676-678 (Solomon). She owns and operates Skybound Therapies, Ltd., which provides consultation advice for complex young people with behavior difficulties and focuses on the intersection of ABA and science-based interventions for communication. Tr. 677-679 (Solomon). She has over 17 years of experience in the field of ABA working with children with autism and related disabilities. P66 at 7.

¹⁹ Ms. Denison is a BCBA, holds a Bachelor's in Psychology, a Master's degree in ABA, is certified in TalkTools Level 2, and works as an ABA consultant with Skybound. P67; Tr. 732 (Denison). She has worked as a BCBA for the last 15-20 years in multiple settings, including residential homes for adults and teenagers, schools, and clinics. Tr. 733-734 (Denison).

Philadelphia. Tr. 681, 684-685, 689 (Solomon); Tr. 734, 760 (Denison). They accompanied the family on community visits to a store, a supermarket, and a restaurant, and taught the Student safety and self-calming skills. *Id.* Sometime in September 2024, Ms. Denison also participated in a meeting as part of the Student's transition from Lindens to the Bancroft school, and provided Bancroft staff with an FBA she completed during her two-day assessment and observations of the Student.²⁰ Tr. 735, 748-750, 758-759 (Denison).

267. During their assessment in May 2024, Ms. Solomon and Ms. Denison found the Student was primarily focused on receiving a high level of social interaction and attention, such as big facial expressions and animated responses. Tr. 684, 686, 694 (Solomon); Tr. 736-738 (Denison). They further observed found that the Student was attentive and quick to learn, and that within a 2 days they were able to implement and practice direct behavior strategies which allowed the Student to function safely in the community with his Parents, such as "calm body" and "walk with me". Tr. 689-690, 694 (Solomon); Tr. 735, 737-738, 740-742 (Denison).

268. Both Ms. Solomon and Ms. Denison noted that the Student required proactive teaching of replacement skills, but that this was complicated by his communication difficulties. Tr. 686-687 (Solomon); Tr. 744 (Denison). Both Ms. Solomon and Ms. Denison opined the Student was a good candidate for ABA therapy, but that he required an ABA team that understood motor-based speech disorders and an SLP trained in motor-based speech disorders who understood ABA approaches. Tr. 701-702 (Solomon); Tr. 736, 739, 744, 753-754 (Denison). Both opined that daily oral motor therapy, such as "TalkTools", would support the Student's communication efforts. Tr. 697-699 (Solomon); Tr. 743-744 (Denison).

269. Ms. Solomon further opined that the Bancroft/Lindens behavior plans she reviewed did not meet the Student's needs because the plans focused on access to tangibles rather than tangibles as a vehicle to gain attention. Tr. 704 (Solomon). Ms. Solomon opined that the Bancroft/Lindens behavior reports failed to identify that Student's multifunctional behavior in gaining attention ran across all the other functions, including escaping or avoiding situations to gain more attention, and completing tasks to gain attention. Tr. 704 (Solomon).

270. However, Ms. Solomon did not specifically recall which records she reviewed during her assessment of the Student. Tr. 720 (Solomon). Ms. Solomon could not recall the specific dates of any of the Bancroft/Lindens behavior plans or progress reports

²⁰ This FBA was not provided as an exhibit prior to hearing, and was not admitted during hearing.

she reviewed, and did not speak with anyone at Bancroft about their behavior support plans or progress reports. Tr. 720-722 (Solomon). Ms. Solomon did not speak to anyone at Bancroft/Lindens about the Student. Tr. 724 (Solomon). Ms. Solomon was also unfamiliar with the qualifications of the providers who worked with the Student at Bancroft/Lindens. Tr. 726 (Solomon).

271. Ms. Denison similarly did not recall what Student records, IEPs or progress reports she reviewed, although she reviewed “some reports from a clinical psychologist.” Tr. 755-757, 764 (Denison). Ms. Denison never observed the Student at Bancroft nor did she have any other discussions with Bancroft or Lindens staff about the Student, other than the September 2024 meeting. Tr. 760 (Denison). Ms. Denison was not familiar with the educational programming or services the Student received at Bancroft, or the qualifications of the Bancroft providers working with the Student other than that they were BCBAs and teachers. Tr. 761-762 (Denison).

272. Ms. Solomon is a BCBA, holds a Master’s degree in “Positive Approaches to Challenging Behavior”, is trained in ABA, and is certified in TalkTools Level 4. Ms. Denison is a BCBA, holds a Bachelor’s in Psychology, a Master’s degree in ABA, and is certified in TalkTools Level 2. Therefore, both have the experience and training necessary to assess the Student’s behavior, his ABA needs and to provide opinions on behavior training and how the Student might benefit from the TalkTools program.

273. However, Ms. Solomon did not specifically recall which educational records, behavior plans, or progress reports she reviewed for the Student. She also did not speak with anyone at Bancroft about the behavior plans or progress reports, and was unfamiliar with the qualifications of providers who worked with the Student at Bancroft/Lindens. Ms. Solomon also assessed the Student outside the RTC setting with his family during a vacation. She never observed him at Lindens with staff or other students. Therefore, I accord limited weight to her opinions about the appropriateness of the Bancroft/Lindens behavior plans, or the services those plans provided the Student.

274. Similarly, Ms. Denison did not recall which Student records, IEPs or progress reports she reviewed for the Student, and never spoke to Bancroft or Lindens staff about the Student, other than the September 2024 meeting. Ms. Denison was not familiar with the educational programming or services the Student received at Bancroft, or the qualifications of the Bancroft providers working with the Student other than that they were BCBAs and teachers. Ms. Denison assessed the Student outside the RTC setting with his family during a vacation. She never observed him at Lindens with staff or other students. Therefore, I accord limited weight to her opinions about

the appropriateness of the Bancroft/Lindens behavior plans, or the services those plans provided the Student.

Ms. Hill, Crossroads Therapy Clinic

275. As outlined above, the District did not visit Lindens or Bancroft between July 20, 2022 and August 16, 2024. The District also did not call any witnesses from Lindens or Bancroft to testify regarding the special education services provided to the Student during this period of time. Only the Parents and Ms. Hill testified as to their observations of and interactions with the Student during this period of time.

276. Ms. Hill contracted with the District to conduct a January 2022 Oral Motor Report and provide SLP services to the Student while he resided at Lindens. P3 at 4-7; Tr. 479 (Hill). Ms. Hill observed that the Student received very little time with the Lindens SLP, that the Lindens SLP expressed frustration about being able to get staff to oversee meals and work on feeding issues, and that the Student missed multiple video sessions with the Lindens SLP and Ms. Hill. Tr. 474, 484 (Hill).

277. Ms. Hill's session notes further reflect that the Student missed five of twelve scheduled video sessions in March 2023; two of seven sessions in August 2023; two of four scheduled sessions in November 2023; nine of twenty-two sessions between January 2024 and March 2024; and two of eight sessions in April 2024. *Compare*, D43; D45; D49 at 13-15, 17-19, 24-27; Tr. 484 (Hill). However, Ms. Hill cancelled at least one session a month due to travel, lecture or other obligations. Tr. 495 (Hill).

278. Ms. Hill opined Student did not meet or maintain many of the goals outlined in her January 2022 Oral Motor Report during his time at Lindens. P3 at 4-7; Tr. 479 (Hill). She further opined that the Student also did not regain his prior level speech and communication skills that he had previously demonstrated in 2020 and 2021, when the Ms. Hill primarily worked with the Student and his father. *Id.* Ms. Hill opined that Student significantly regressed in his speech and communication skills since 2021. *Id.*

279. Ms. Hill, M.S., CCP-SLP, is a licensed Speech and Language Pathologist with a Certificate of Clinical Pathologist and has worked almost 25 years with clients who have motor speech and feeding issues. Ms. Hill is also a trained therapist and teacher with TalkTools, a motor-based approach for speech therapy which includes myofunctional and feeding therapy. She also completed training in working with kids with apraxia and dysarthria, and teaches courses in these areas. Therefore, Ms. Hill is qualified to provide an opinion on the Student's progress in communication and language skills. Further, because Ms. Hill worked directly with the Student and his

Father in 2020 and 2021, assessed the Student in 2022, and provided SLP services between 2022 and 2024, I accord significant weight to her expert opinion that the Student significantly regressed in his speech and communication skills while at Lindens.

Parent Observations of Student Progress

280. After the Student was admitted to Lindens in July 2022, the Parents visited the Student multiple times a year, every 6 weeks or so, picking him up from Lindens and taking him off campus to spend time with the family. Tr. 316 (Father). During family visits to Lindens, the Parents observed that Student was housed in a unit which had 3-4 other students with severe behaviors, aggression issues, self-injury behaviors. Tr. 296 (Father). The Parents believed that the Student did not receive 1:1 support, that Lindens staff did not understand the Student's behaviors, and that Lindens did not fully train staff on reinforcement of behaviors. D21; Tr. 296-297, 308 (Father).

281. The Parents observed that during the Student's first month or two at Lindens, he developed a lot of new behaviors, some of which were reflected in his BIPs. *Compare*, D21; Tr. 308 (Father). The Parents further observed that the Student would call them throughout the day on his iPad, and would usually be in his bathroom or in his bed, often in his bathrobe and watching a movie. Tr. 294-295 (Father). The Parents observed that the Student's behaviors have regressed after his time at Lindens, in that he is no longer able to transition from his iPad without a struggle and NECC has had to implement a program to wean him off of the device so he can engage more in the school day. Tr. 1234-1235 (Father).

282. The Parents also observed regression in the Student's speech since 2021, when the Student was using his speech device to communicate up to 6- and 7-word phrases, which have now regressed to only 1-word phrases at Lindens. Tr. 1232 (Father). Further, while the Student verbalized multiple words in 2021, the Parents observed that he is lost coordination of the muscles in his mouth and only verbalizes single words. *Id.*

283. The Parents further observed that the Student's gross motor and fine motor abilities have regressed while at Lindens. Tr. 1232 (Father). Prior to attending Lindens, the Student was able to go up and down stairs, could move from a seated position on the floor to standing, but these skills have regressed. Tr. 1232-1233 (Father). The Student could previously use a cup and hold water, but is no longer able to use his hands to hold a cup, cannot open his hand flat, and now opens doors with a closed fist. Tr. 1233 (Father).

284. While the Student was at Lindens and Bancroft, they spoke to the behavior plan supervisor, Ms. Fioravanti, Bancroft BCBA, nearly daily by phone or email regarding the Student's behavior plan until she left Lindens on some unspecified date. D18 at 1; Tr. 287-288 (Father). The Parents also received occasional emails from Ms. Adkins, the RBT that worked under Ms. Fioravanti, during the Student's first year at Lindens. Tr. 300-301 (Father). The Parents spoke occasionally with Ms. Price, the Lindens OT, but she left Lindens soon after the Student was admitted. Tr. 303 (Father). The Parents also spoke with Ms. Waller, the Bancroft SLP, perhaps monthly or quarterly. Tr. 291-292 (Father).

285. The Parents spoke occasionally with Ms. Esposito, the Student's initial special education teacher, and observed one of her teaching sessions remotely for a few minutes, but she also left Lindens at some point. D19; Tr. 302-303 (Father). The Parents also occasionally communicated with Ms. Emerson, the Lindens social worker, who provided one-on-one services to the Student about a year after he was enrolled at Lindens. Tr. 301-302 (Father). The Parents spoke with Ms. Grilli, the Lindens Special Education Director, only during formal meetings about the Student's progress. Tr. 300 (Father).

Parents' Claimed Expenses

286. In June 2023, the Parents requested that the District reimburse them for travel expenses for escorting the Student to and from home for his August 2023 visit. D19. The District reimbursed the Parents for these costs. Tr. 1137 (Wertz).

287. In January 2024, the Parents sent Ms. Wertz an e-mail containing a spreadsheet outlining a compensatory education cost breakdown in an amount of \$637,280.00 for the period of September 1, 2021 through the present date. P24. The cost breakdown outlined services the Parents claimed the District did not provide for BCBA Supervision, BCBA Parent Training, 1:1 CBT (Cognitive Behavior Therapy); SLP; OT; PT; and SLP Annual evaluation. P24 at 5; Tr. 1100-1101 (Wertz). The spreadsheet further listed SLP, PT, OT services not received from September 30, 2023 through the present, at an estimate of \$2,438.00 per week (16.25 hours/week at \$150.00 per hour):

Compensatory Education Cost Breakdown

Date Begin	Date End	Service	Hours/Wk	Weeks	Hourly Rate	Days	Daily Rate	Sub Total
9/1/2021	1/30/2022	BCBA Supervision	9	21.7	\$120	-	-	\$23,451
		BCBA Parent Training	1	21.7	\$120	-	-	\$2,606
		1:1 CBT	30	21.7	\$76	-	-	\$49,509
		SLP	5.5	21.7	\$150	-	-	\$17,914
		OT	1.25	21.7	\$150	-	-	\$4,071
		PT	1	21.7	\$150	-	-	\$3,257
		SLP Annual Eval	-	-	-	-	\$3,000	\$3,000
1/31/2022	7/19/2022	Residential	-	-	-	170	\$1,767	\$300,411
		Education	-	-	-	122	\$164	\$19,953
		Virtual SLP	5	24.3	\$150	-	-	\$18,214
		Local SLP	12.5	24.3	\$150	-	-	\$45,536
		PT	1	24.3	\$150	-	-	\$3,643
		OT	1.25	24.3	\$150	-	-	\$4,554
7/20/2022	9/30/2023	Virtual SLP	3.5	62.6	\$150	-	-	\$32,850
		Local SLP	10.5	62.6	\$150	-	-	\$98,550
		PT	1	52.6	\$150	-	-	\$7,886
		OT	1.25	10.0	\$150	-	-	\$1,875

*Not taken into account are the over 40% of scheduled speech sessions that have been canceled/missed while at Lindens.

Total: \$637,280

9/30/2023	?	SLP/PT/OT	16.25	\$150	\$2,438	per week
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Id. The District did not make any offer of compensatory education to the Parents in response to this request. Tr. 1101 (Wertz).

288. Between January 17, 2023 and February 24, 2024, the Parents incurred the following out-of-state medical expenses for the Student while he resided at Lindens:

Date	Service	Provider	Amount Paid
1/17/2023	Ophthalmology	Children's Hospital of Philadelphia	\$239.38
2/22/2023	Primary Care	Children's Hospital of Philadelphia	\$166.56
2/23/2023	Ophthalmology	Children's Hospital of Philadelphia	\$107.83
2/24/2024	Perscription Medications	Altruix	\$220.94
3/16/2023	Perscription Medications	Terrapin Pharmacy	\$371.62
4/27/2023	Ophthalmology	Children's Hospital of Philadelphia	\$107.83
5/18/2023	Perscription Medications	Terrapin Pharmacy	\$344.37
8/4/2023	Perscription Medications	Terrapin Pharmacy	\$335.32
12/5/2023	Primary Care	Children's Hospital of Philadelphia	\$11.31
2/23/2024	Foot care	Foot Health Centers, PA	\$32.13
2/24/2024	Perscription Medications	Altruix	\$220.94
Total			\$2,158.23

P17. The District did not reimburse the Parents for these expenses. Tr. 1108 (Wertz).

289. As outlined above, the District also did not reimburse the Parents for their visit to NECC on May 6 and 7, 2024. P26; Tr. 1101-1102, 1104-1106 (Wertz).

290. Sometime after October 2024, the Parents updated their claims for compensatory education for the period of November 1, 2021 through October 4, 2024, in the amount of \$1,135,656.00. P68; Tr. 1263-1264 (Father). The cost breakdown outlined services the Parents claimed the District did not provide during this period, using the rates for services charged by Lindens, and also included documentation and a claim for 135 cancelled SLP sessions:

Compensatory Education Anticipated Cost Breakdown

Date Begin	Date End	Service	Hours/Wk	Weeks	Hourly Rate	Days	Daily Rate	Sub Total	
9/1/2021	1/30/2022	BCBA Supervision	9	21.7	\$120	-	-	\$23,451	In IEP, not provided
		BCBA Parent Training	1	21.7	\$120	-	-	\$2,606	In IEP, not provided
		1:1 CBT	30	21.7	\$76	-	-	\$49,509	In IEP, not provided
		SLP	5.5	21.7	\$150	-	-	\$17,914	In IEP, not provided
		OT	1.25	21.7	\$150	-	-	\$4,071	In IEP, not provided
		PT	1	21.7	\$150	-	-	\$3,257	In IEP, not provided
		SLP Annual Training	-	-	-	-	\$3,000	\$3,000	In IEP, not provided
1/31/2022	7/19/2022	Residential	-	-	-	170	\$1,767	\$300,411	In IEP, Based on Lindens rate
		Education	-	-	-	122	\$164	\$19,953	In IEP, Based on Lindens rate
		1:1 Trained Staff/CBT	30	24.3	\$76	-	-	\$55,371	In IEP, Based on 2021 DBS rate
		Virtual SLP	5	24.3	\$150	-	-	\$18,214	In IEP, Not provided
		Local SLP	12.5	24.3	\$150	-	-	\$45,536	In IEP, Not provided
		PT	1	24.3	\$150	-	-	\$3,643	In IEP, not provided
		OT	1.25	24.3	\$150	-	-	\$4,554	In IEP, Not provided
7/20/2022	11/14/2024	Virtual SLP	3.5	121.3	\$150	-	-	\$63,675	Only 1.5 hr/wk provided out of 5 hr in IEP
		1:1 Trained Staff/CBT	30	121.3	\$76	-	-	\$276,531	In IEP, not provided
		Local SLP	10.5	121.3	\$150	-	-	\$191,025	only 2hr/wk provided out of 12.5 hr in IEP
		PT	1	96.3	\$150	-	-	\$14,443	only 25 PT sessions total provided
		OT	1.25	81.3	\$150	-	-	\$15,241	Only 40 weeks of OT provided
9/1/2023	9/1/2024	SLP Annual Training	-	-	-	-	\$3,000	\$3,000	In IEP, not provided
1/1/2023	10/4/2024	Cancelled SLP Sessions		135 Sessions	\$150			\$20,250	In IEP, not provided

Total: \$1,135,656.00

Id. The District did not believe that the Parents inaccurately calculated the missed SLP sessions, but did not offer compensatory education for them. Tr. 1112-1113, 1117 (Wertz).

291. The District acknowledged that the Student did not receive PT or OT services through Lindens. Tr. 1114 (Wertz). At some point prior to September 2023, Lindens staff began taking the Student to CHOP in Philadelphia for direct PT services through the Parents' private insurance. D28 at 30-31; Tr 993-994 (Wertz). The District reimbursed the Parents for out of pocket payments for the private PT services and, sometime in 2024, began to pay directly for the Student's PT sessions. Tr. 993-994, 1114-1115 (Wetz).

292. The Parents additionally request reimbursement to the Student's existing compensatory fund in the amount of \$6,273.62 for other expenses. P69; Tr. 1265 (Father). These included expenses related to Ms. Hill's therapy visit in May 2022 during the Student's interim placement; the Parent's May 2024 NECC visit; an undated Parent

visit to Monarch²¹; and the Student's therapeutic riding class between August 2024 and November 2024:

Meals to see Renee therapy visit May 2022	\$936.60
Dinner on 5/6/24 for NECC visit	\$26.19
Gas for NECC visit	\$12.11
Car Rental for NECC Visit May 7, 2024	\$120.13
Airfare for Micah and Beth for NECC visit	\$1,156.83
Hotel for NECC visit	\$201.20
Parking at airport for NECC visit	\$20.00
Meals on plane for NECC Visit	\$44.00
Mileage to airport for NECC Visit	\$13.00
	\$1,593.46
Monarch School visit hotel	\$191.91
Monarch School visit car rental	\$207.72
	\$399.63
Hearts Therapeutic Riding Center Camp Fee Aug 2024	\$180.00
Hearts Therapeutic Riding Center Fee Sept 2024	\$55.00
Hearts Therapeutic Riding Center Fee Oct 2024	\$160.00
Hearts Therapeutic Riding Center Fee Nov 2024	\$120.00
SF Staff transportation and supervision for Camp Aug 2024	\$650.60
ND Staff transportation and supervision Fee 9/21/24	\$259.61
ND Staff transportation and supervision Fee 10/5/24	\$263.11
ND Staff transportation and supervision Fee 10/19/24	\$323.77
SF Staff transportation and supervision 10/26/24 and 11/2/24	\$508.37
SF Staff transportation and supervision 11/9/24	\$354.00
ND Staff transportation and supervision Fee 11/16/24	\$340.47
	\$3,214.93
ASHA Dysarthria Webinar	\$129.00
Total Compensatory Education Fund Requests	\$6,273.62

P69 at 1-2; Tr. 1243-1244, 1265 (Father).

²¹ Monarch is an RTC which was added in March 2022, to District's chart tracking potential RTCs for the Student. D47 at 1.

CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Office of Administrative Hearings (OAH) has jurisdiction over the parties and subject matter of this action for the Superintendent of Public Instruction as authorized by 20 United States Code (USC) §1400 *et seq.*, the Individuals with Disabilities Education Act (IDEA), Chapter 28A.155 Revised Code of Washington (RCW), Chapter 34.05 RCW, Chapter 34.12 RCW, and the regulations promulgated under these provisions, including 34 Code of Federal Regulations (CFR) Part 300, and Chapter 392-172A Washington Administrative Code (WAC).
2. The District bears the burden of proof in this matter. RCW 28A.155.260(1). In a due process hearing, the burden of proof is a preponderance of the evidence. RCW 28A.155.260(3).

The IDEA and FAPE

3. Under the IDEA, a school district must provide a free and appropriate public education (FAPE) to all eligible children. In doing so, a school district is not required to provide a “potential-maximizing” education, but rather a “basic floor of opportunity.” *Bd. of Educ. of Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176, 197 n.21, 200-201 (1982).
4. In *Rowley*, the United States Supreme Court established both a procedural and a substantive test to evaluate a state's compliance with the IDEA, as follows:

First, has the state complied with the procedures set forth in the Act? And second, is the individualized educational program developed through the Act's procedures reasonably calculated to enable the child to receive educational benefits? If these requirements are met, the State has complied with the obligations imposed by Congress and the courts can require no more.

Rowley, 458 U.S. at 206-07 (footnotes omitted).

5. The first inquiry is whether the District has complied with the procedures established by the IDEA. *Id.* at 206-07. Procedural safeguards are essential under the IDEA, particularly those that protect the parents’ right to be involved in the development of their child’s educational plan. *Amanda J. v. Clark County Sch. Dist.*,

267 F.3d 877, 882 (9th Cir. 2001). Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they:

- (I) impeded the child's right to a free appropriate public education;
- (II) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or
- (III) caused a deprivation of educational benefits.

20 USC §1415(f)(3)(E)(ii); see WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

6. The next question is whether the District has violated the substantive requirements of the IDEA. The Supreme Court recently clarified the substantive portion of the *Rowley* test as quoted above. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L.Ed.2d 335 (2017). Additionally, the Student's "educational program must be appropriately ambitious in light of his circumstances" *Id.* at 1000.

7. The Ninth Circuit has explained the *Endrew F.* standard as follows:

In other words, the school must implement an IEP that is reasonably calculated to remediate and, if appropriate, accommodate the child's disabilities so that the child can make progress in the general education curriculum . . . taking into account the progress of his non-disabled peers, and the child's potential.

M.C. v. Antelope Valley Union High Sch. Dist., 858 F.3d 1189, 1201 (9th Cir.), *cert. denied*, 138 S. Ct. 556 (2017) (citations omitted; internal quotation marks omitted).

8. However, the IDEA does not require districts to provide the "absolutely best" education for a child. Rather, as emphasized by the Ninth Circuit:

An "appropriate" public education does not mean the absolutely best or "potential-maximizing" education for the individual child . . . The states are obliged to provide "a basic floor of opportunity" through a program "individually designed to provide educational benefit to the handicapped child."

Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1474-75 (9th Cir. 1993).

9. The determination of reasonableness is made as of the time the IEP was developed. *Adams v. State of Oregon*, 195 F.3d 1141, 1149 (9th Cir. 1999). An IEP is “a snapshot, not a retrospective.” *Id.*

Allegations of Substantive Violations of IDEA

Issue a.i – The District Failed to Provide the Student with an Educational Placement Between October 6, 2021 and July 20, 2022

10. The Parents allege that the District failed to provide the Student with an educational placement aligned with his IEP from September 18, 2021²² to July 20, 2022. PB25.²³ The Parents assert that the District cannot prove it provided IEP services at DBS because it provided no meaningful oversight of services delivered at DBS during the 2021-2022 school year and no DBS staff member testified at the hearing. PB6. The Parents further argue that between September 18, 2021 and January 18, 2022, when it was determined the Student required an RTC, the District did not provide the Student with the services called for in his June 2021 IEP. *Id.* The Parents further argue that even after the District finalized a January 2022 IEP, it did not provide the services outlined in the IEP and only offered minimal interim services in May 2022. PB9-10.

11. The District asserts that it provided the Student with an educational placement at DBS between September 18, 2021 and December 3, 2021, and it thereafter made “best efforts” to provide the Student with an educational placement before he enrolled at Lindens. DB22-23. The District asserts that its ability to place the Student was hampered by his increasingly challenging behaviors, which resulted in him leaving DBS, and that the District was unable to timely find an appropriate residential placement despite an extensive search. DB22-24.

12. A school district’s obligation to provide the special education and related services provided in a student’s IEP does not require “perfect adherence to the IEP . . .” *Van Dyun v. Baker Sch. Dist.* 5J, 481 F.3d 770, 779 (9th Cir. 2007). Failure to implement an IEP constitutes a denial of FAPE only “when the services provided to a disabled child fall significantly short of those required by the IEP,” so as to constitute

²² Issue Statement a.i identifies September 18, 2021, as the beginning date for this claim. This date aligns with the statute of limitations for the due process hearing request filed on September 18, 2023. See also, PB25.

²³ PB refers to Parent’s Post Hearing Brief, while DB refers to District’s Post Hearing Brief.

a material failure. *Id.* at 773.

13. Only material failures to implement an IEP violate the IDEA. *Van Duyn v. Baker Sch. Dist. 5J*, 502 F.3d 811 (9th Cir. 2007). Minor discrepancies in the services required by the IEP do not violate the IDEA. *Id.*

“[S]pecial education and related services” need only be provided “in conformity with” the IEP. [20 USC §1401(9).] There is no statutory requirement of perfect adherence to the IEP, nor any reason rooted in the statutory text to view minor implementation failures as denials of a free appropriate public education.

* * *

We hold that a material failure to implement an IEP violates the IDEA. A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child’s IEP.

Id. at 821-22 (italics in original).

June 2021 IEP

14. The June 2021 IEP provided the Student with 1,335 minutes of SDI per week in special education services to be provided by a special education teacher, and 545 minutes of SDI per week in related services to be provided by PT, OT staff, and SLP, for a total of 1800 minutes of SDI per week, or 6 hours per day at DBS. As supplementary aids and services, the IEP also provided 6 hours of 1:1 support per day, and 9 hours BCBA support per week, to be provided at DBS as his LRE. The LRE placement option statement further provided:

There may be variation on [Student’s] service matrix due the variability of his schedule at DBS due to behavior, instructional programming, preference assessments, etc.

15. The facts reflect that the Student typically attended DBS 6 hours a day, Monday through Friday. Sometime in July 2021, DBS initiated Skill-Based Treatment (SBT) in response to increasing Student negative behaviors, with a goal of focusing on functional communication. On or around August 24, 2021, the Parents also reduced the Student’s dose of [REDACTED]. The Student’s behavior improved at home, but significantly declined at DBS.

16. The Student was away from DBS on vacation between Monday, September 20 and Friday, September 24, 2021. During this time, DBS staff met to discuss a safety incident which had occurred on Wednesday, September 1, 2021. When the Student returned to DBS on Monday, September 27, 2021, he continued to attend full time, receiving between six and eight hours of services each day. However, a second safety incident occurred on Wednesday, October 6, 2021.

17. The Student remained home between Wednesday, October 6, 2021 and Thursday, October 14, 2021. Due to his behavioral issues, the Student's schedule at DBS was reduced to one to two hours per day. The Student's continued behaviors resulted in additional safety incidents on October 6, 2021, November 29, 2021 and December 3, 2021. Due to his behaviors, the Student continued to attend DBS only one to two hours per day through December 3, 2021, his final day at DBS.

18. DBS and the District met several times during this period of time, and the Parents signed a Reevaluation Notification/Consent on November 18, 2021. However, the Student was not reevaluated and the June 2021 IEP was not amended.

19. Beginning December 4, 2021, the Student remained at home with family and received no special education services outlined in the June 2021 IEP, other than SLP services provided by Ms. Hill with the assistance of the Father.

20. In December 2021, the District completed the IEP reevaluation. The reevaluation specifically noted that although the District school team possesses a high level of expertise, and employed 3 BCBAs, the Student required an RTC to manage and modify his behaviors to guarantee the safety of the Student, school staff and peers. On January 18, 2022, the District created a new IEP specifying that the Student would receive all special education services at an RTC.

21. Between October 6, 2021, when the Student remained home after a second safety incident, and December 3, 2021, when the Student left DBS after a final safety incident, the Student received a maximum of one to two hours per day of services at DBS, consisting mostly of BCBA supports. Between December 4, 2021 and January 18, 2022, the Student received none of services outlined in his June 2021 IEP, other than SLP services provided by Ms. Hill with the assistance of the Father. It is clear that the District materially failed to implement the IEP during this period of time.

22. The District argues it made "best efforts" to deliver the services outlined in the June 2021 IEP. However, "best efforts" is not a defense to the requirements outlined in the IDEA to deliver special education services. Even in situations where, practically

speaking, it is impossible to materially implement an IEP, school districts cannot defend a denial of FAPE. See, e.g., *District of Columbia Pub. Schs.*, 120 LRP 8116 (SEA DC January 3, 2020) (School districts cannot use an "impossibility" defense to thwart a parent's claim of FAPE denial where no private school will accept a child), citing *Schiff v. District of Columbia.*, 2019 WL 5683903 (D.D.C. Nov. 1, 2019)); *Portland Sch. Dist. 1J.*, 82 IDELR 188 (SEA OR 2022) (A district's placing a student with medical needs on home instruction due to inability hire a nurse resulted in an IDEA violation); *Bueno v. Bass Lake Joint Union Elem. Sch. Dist.*, 123 LRP 14143 (E.D. Cal. April 28, 2023) (Neither staff shortages nor the difficulties posed by the COVID-19 pandemic excused a California district's failure to provide the bulk of the services required by a 4-year-old girl's stay-put IEP).

23. Based on these facts, I conclude that the District materially failed to implement the Student's June 2021 IEP between October 6, 2021 and January 18, 2022.

January 2022 IEP

24. Between January 18, 2022, when the IEP was created, and July 20, 2022, the Student remained at home with his family and only received SLP services provided by Ms. Hill with the assistance of his Father. In May 2022, the Student received a 3-week interim educational placement providing only one hour per day of transportation and activities. The District did not otherwise provide any of the special education or related services outlined in the January 2022 IEP. The District's failure to provide the Student with any appropriate educational placement during this period of time denied the Student FAPE.

25. The January 2022 IEP contained a services matrix which provided the Student with 1,060 minutes of SDI per week in special education services to be provided by a special education teacher and BCBA, and 815 SDI minutes per week in related services to be provided by PT, OT staff, SLP, school personnel, and special education staff, for a total of 1875 minutes, or 31.25 hours, of SDI per week. The IEP indicated that the Student would receive all SDI and related services at an RTC, but did not identify the specific RTC to which the Student would be admitted. The IEP also included ESY services in cognitive, behavior, social/emotional, and communication.

26. Between May 9, 2022 and May 27, 2022, the District provided an interim educational program, supervised by two BCBAs and a special education coordinator. The Student received FCT services, OT services, fine motor services, and SLP services, and did not engage in any negative behavior or aggression incidents. However, the program totaled only one hour per day of both transportation and activities. Thus, the

Student did not receive all of the SDI or related services outlined in the January 2022 IEP.

27. Additionally, despite the fact that the Student's January 2022 IEP included ESY services in cognitive, behavior, social/emotional, and communication, the District did not provide any ESY services after his interim educational program ended on May 27, 2022. Rather, the Student continued to remain home without any services other than SLP therapy provided by Ms. Hill with the assistance of his Father, until his admission to Lindens on July 20, 2022.

28. Again, the District argues it made "best efforts" to provide services to the Student. However, "best efforts" are insufficient to counter the District's material failure to implement the January 2022 IEP in any respect. During the seven month period between December 4, 2021 and July 20, 2022, the District failed to provide the Student with any meaningful educational placement other than a 3-week interim educational program offering only one hour per day of transportation and activities. The fact that the District offered this interim placement illustrates that it had the ability to provide at least some of the services outlined in the January 2022 IEP. Yet, it failed to provide the Student with any educational placement for months, despite its knowledge that the Student was home with family and without services.

29. In sum, I conclude that the District's material failure to implement any provisions of the January 2022 IEP between January 18, 2022 and July 20, 2022, and its failure to provide the student an educational placement during this period of time, violated the IDEA and denied the Student a FAPE. The District has failed to meet its burden on this issue.

Issue a.ii – The District Did Not Violate IDEA or Deny the Student FAPE by Failing to Complete a BIP Prior to the Bancroft July 2022 BIP

30. The Parents next allege that the District denied the Student a FAPE by failing to complete a new BIP after Dr. Enns completed his FBA in January 2022, through the creating of a new BIP at Bancroft in July 2022. PB9. The District responds that it appropriately developed functional communication and tolerance training and programming for the Student in January 2022. DB25.

31. The facts reflect that between January 2022 and July 2022, the IEP team never completed a BIP. It also never determined that a BIP was necessary for the Student to receive FAPE. However, I conclude that the District's failure to create a BIP did not deny

the Student a FAPE because it addressed the Student's needs for positive behavioral interventions in January 2022 in other ways.

32. Where a student's behavior impedes the student's learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); WAC 392-172A-03110(2)(i).

33. Positive behavioral interventions are strategies and instruction that can be implemented in a systematic manner in order to provide alternatives to challenging behaviors, reinforce desired behaviors, and reduce or eliminate the frequency and severity of challenging behaviors. Positive behavioral interventions include the consideration of environmental factors that may trigger challenging behaviors and teaching a student the skills to manage his or her own behavior. WAC 392-172A-01140.

34. A BIP is a plan incorporated into a student's IEP if the IEP team determines that it is necessary for the Student to receive FAPE. WAC 392-172A-01031. At a minimum, a BIP must describe the following:

- (1) The pattern of behavior(s) that impedes the student's learning or the learning of others;
- (2) The instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team;
- (3) The positive behavioral interventions and supports to:
 - a. Reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors;
 - b. Ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities;
- (4) The skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior for the Student.

35. A BIP in an IEP is appropriate if it is reasonably tailored to meet the student's unique behavioral needs at the time that it was developed. *Bouabid v. Charlotte*

Mecklenburg Schs. Bd. of Educ., 121 LRP 41291 (W.D.N.C. December 10, 2021); see also, *Endrew F.*, 580 U.S. at 399.

36. Dr. Enns completed his psychological evaluation and FBA in December 2021. In January 2022, prior to IEP team meetings, the District completed a reevaluation which included a Behavior Assessment (January 2022 Behavior Assessment), a Functional Communication Profile (January 2022 Functional Communication Profile), and a Functional Communication Training (January 2022 FTC).

37. The January 2022 Functional Communication Profile noted the same concerns outlined in Dr. Enns' psychological evaluation, that the Student required constant redirection and adult attention to prevent him from perseverating or escalating in aggressive behaviors. The communication profile further noted that the Student had profound impairments in communication, that the Student required communication instruction designed and monitored by an SLP, and recommended language interventions include increasing his ability to combine words, and increasing use of his AAC device with speech to help the Student communicate with less familiar people.

38. The District thereafter completed a January 2022 Behavior Assessment and a January 2022 FTC for the Student. Neither of these met the requirements of a BIP as they did not specifically list the pattern of the Student's behaviors that impeded his learning, or the conditions or circumstances that contributed to the pattern of behaviors. WAC 392-172A-01031.

39. However, the District's January 2022 Behavior Assessment noted the Student required constant redirection and adult attention to prevent him from perseverating or escalating in aggressive behaviors, and that he required ABA services focusing functional communication, tolerance of delay or denial through the use of reinforcement, emotional regulation and teaching simple de-escalation/calming strategies. The January 2022 FTC further outlined goals to meet his attention needs, and outlined teaching steps for each goals. All of these addressed the Student's behaviors with a plan for positive behavioral intervention, and steps for teaching alternate behaviors.

40. Thus, while the IEP team never specifically recommended or created a BIP between January 2022 and July 2022, it considered the use of positive behavioral interventions and supports, and other strategies, to address the Student's behavior prior to his admission at a residential facility in July 2022. This comports with the requirements outlined in 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i); WAC 392-172A-03110(2)(i). I therefore conclude that District's failure to specifically

develop a BIP for the Student during this period of time did not violate the IDEA or deny the Student a FAPE. The District has met its burden on this issue.

Issue a.iii – The District Failed to Include Required PT and OT Services in IEPs and IEP Amendments Between July 20, 2022 and November 16, 2024

41. The Parents next argue that the District failed to provide the Student with FAPE from July 20, 2022, to November 16, 2024, by not having IEPs and IEP amendments in place that included all of the related services and supplementary aids and services the Student needed order to make meaningful progress. PB11. The Parents specifically argue these include insufficient services in SLP, OT, PT, Behavior (including ABA to be provided by RBT and BCBA); related services in recreation; transportation for home visits prior to his most recent IEP; support for school personnel including appropriate training from qualified providers in aspects of the Student's disabilities as necessary; and related services in Parent Counseling and Training as identified in the Student's most recent reevaluation.

42. The District responds that it did not deny the Student FAPE, because the Student's IEPs between July 20, 2022 and November 16, 2024, offered related services and supplementary services which were appropriate to assist Student with benefitting from SDI at the time they were offered. DB25-28.

43. After review of the record, I conclude that the District failed to include required PT services in the Student's September 2022 IEP and June 2023 IEP Amendment. The District also failed to include required PT and OT services in the Student's September 2023 IEP, and December 2023 IEP Amendment. The failure of the District to include these necessary and required services in the Student's IEPs violated the IDEA and denied the Student FAPE.

44. WAC 392-172A-03110(1) requires an IEP team, in developing an IEP, to consider the student's strengths; the student's most recent evaluation results; the academic, developmental, and functional needs of the student; and the parent's concerns for enhancing the student's education.

45. An IEP must include a statement of the special education and related services to be provided to the student to enable the student to advance appropriately toward attaining the annual goals, to be involved in and make progress in the general education curriculum, to participate in extracurricular and other nonacademic activities, and to be educated and participate with other students, including nondisabled students. WAC 392-172A-03090(1)(d); 34 CFR § 300.320.

46. “Related services” is defined in WAC 392-172A-01155(1) as follows:

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

47. Supplementary aids and services contained in an IEP are aids, services, and other supports that are provided in general education or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment requirements. WAC 392-172A-01185.

48. As outlined above, under *Endrew F.*, “a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F.*, 580 U.S. 386. “Any review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal.” *Id.* (*emphasis in original*). The determination of reasonableness is made as of the time the IEP was developed, because an IEP is “a snapshot, not a retrospective.” *Adams*, 195 F.3d at 1149.

September 2022 IEP

49. When the IEP team met in August 2022, the Student had been at Lindens for just over a month. At that time, he had high baseline levels of aggression and disruption. The Lindens team created a draft BIP to address the Student’s aggression, property destruction, disrobing, screaming, dropping, and perseveration.

50. The IEP team agreed that the primary concern was to stabilize the Student’s behavior. To this end, the IEP team agreed that the Student required related services in SLP and OT, behavior intervention services outlined in a draft BIP and implemented by a BCBA/ABA at Lindens, and supplementary aids and services of SLP consultation, SLP staff training, and Parent visits.

51. The resulting September 2022 IEP outlined a service matrix which included 150 minutes per week in related services for communication to be provided by SLP and school personnel, and 90 minutes per week in related services for fine motor to be delivered by OT staff and school personnel. The team further agreed that the Bancroft staff would receive supplementary aids and services consisting of 2 days per year of training from Ms. Hill to support the Student's OPT, 30 minutes per week of consultation with Ms. Hill for Bancroft SLP to deliver OPT treatment throughout the therapy sessions, and eight yearly family visits to Lindens of five days each.²⁴

52. Both the September 2022 IEP and an August 2022 BIP noted that the Student received intensive behavioral intervention determined by a clinical team, including BCBAs and ABAs. The BIP identified the targeted negative behaviors of aggression, disruption, forced urination, and disrobing, and included intervention, antecedent, teaching, and consequence strategies, as well as reinforcement, response and de-escalation plans.

53. All of these related services appropriately focused on the need to stabilize the Student's severe and aggressive behaviors, as identified by the IEP team and BCBAs at Lindens. Therefore, I conclude that these services were appropriate.

54. However, the September 2022 IEP did not include PT services, despite the fact that the IEP team noted the Student demonstrated core and lower extremity weakness and recommended a daily home exercise program to address posture, core and extremity strength. The IEP team noted that Lindens had no PT available, and thus "PT services are not being recommended." The September 2022 IEP further noted that students in the residential Lindens program could receive additional PT funded through the District, but did not outline any PT services for the Student. The Student received no PT or gross motor services from Lindens.

55. Regardless of the availability of a PT at Lindens, the Student's IEP noted that he required PT services. The IEP team did not recommend PT services, primarily because there was no PT available. The failure of the District to include these services in the September 2022 IEP, illustrates that IEP was not reasonably calculated to enable the Student to make progress in this area of weakness. See, *Endrew F.*, 580 U.S. 386; *Adams*, 195 F.3d at 1149. The District has not met its burden on this issue.

²⁴ The August 2022 IEP inadvertently omitted SLP training and consultation, and parent visits, outlined in the August 2022 draft IEP supplemental aids and services matrix. However, the record reflects that the Student actually received these services.

June 2023 IEP Amendment

56. The IEP team met in June 2023 and amended the Student's IEP for the 2023-2024 school year. At that time, the Student had met several of his IEP goals, and his behaviors had declined from his admission baseline. The IEP amendment again outlined a service matrix which included 150 minutes per week in related services for communication to be provided by SLP and school personnel, and 90 minutes per week in related services for fine motor to be delivered by OT staff and school personnel.

57. The June 2023 IEP amendment contained supplementary aids and services consisting of 2 days per year of training from Ms. Hill to support the Student's OPT, 30 minutes per week of consultation with Ms. Hill for Bancroft SLP to deliver OPT treatment throughout the therapy sessions. After discussion of a 2-week summer trip for the Student to come home, the District increased the family visits from six to eight trips per year. The Student also continued to receive behavior intervention services outlined in a BIP and implemented by a BCBA/ABA.

58. Similar to the September 2022 IEP, the June 2023 IEP team agreed that the primary concern was to stabilize the Student's behavior. I conclude that the Student's June 2023 IEP Amendment and BIP, appropriately focused on this need. Therefore, the District provided appropriate related services in SLP and OT, and appropriate supplementary aids and services in SLP training and consultation, and family visits.

59. However, the District again did not provide PT services to the Student, as no PT was available at Lindens. There is no indication that the Student's gross motor needs were reassessed, or that they had improved. Therefore, the June 2023 IEP Amendment was not reasonably calculated to enable the Student to make progress in these areas. The District has not met its burden on this issue.

September 2023 IEP

60. The IEP team met in September 2023 to review the Student's current IEP and BIP and create a new IEP. The IEP team reviewed the Student's present level of progress in his cognitive, social/emotional, behavior, adaptive, communication, and fine motor IEP goals. The Student's special education teacher reported that the Student had increased his use of his AAC device for communication and was doing well communicating with the device

61. The IEP team developed a September 2023 IEP, which included 150 minutes per week in related services of communication, to be provided by SLP and school personnel, and supplementary aids and services to include 2 days per year of staff

training from Ms. Hill to support the Student's OPT; and eight 5-day trips per year for the family to visit the Student.

62. The IEP team also finalized a September 2023 BIP, implemented by the Lindens BCBA and providing ABA therapy. The BIP indicated that the Student was currently supported by a Level 1 BIP, identified a single targeted negative behavior of aggression. The BIP outlined various intervention strategies, and included a de-escalation plan.

63. The IEP team considered and rejected the Parent's request that the Student receive additional speech and language services outside of his residential services, emphasizing that "time out of program for additional related services will impact the progress in the student's behavior intervention program".

64. The September 2023 IEP again did not include PT or any gross motor skill goals, as Lindens had no PT available. The IEP team discontinued the Student's OT services, noting that the OT structure had changed at Lindens, and instead specified that the Student would receive consultation OT. No accompanying assessment determined that the Student no longer had OT needs.

65. I conclude that while the September 2023 IEP properly provided supplemental services in SLP, and supplementary aids and services of SLP consultation, SLP staff training, and Parent visits, it failed to provide the Student with any direct PT or OT services. There was no indication that the Student no longer needed these services, simply that no PT was available at Lindens and that the OT structure had changed. Therefore, I conclude that the September 2023 IEP was not reasonably calculated to enable the Student to make progress in the area of PT and OT. The District has not met its burden on these issues.

December 2023 IEP Amendment

66. The IEP team met on December 6, 2023, to review the IEP and BIP. The IEP team did not change any of the September 2023 IEP goals. Instead, the IEP was amended to add two Student visits home per year, and decrease family visits to the residential placement to six per year.

67. As outlined above, the District failed to include required PT and OT services in the September 2023 IEP. As the December 2023 IEP Amendment did not change these services, it also was not reasonably calculated to enable the Student to make progress in the area of PT and OT. The District has not met its burden on these issues.

January 2024 IEP Amendment

68. The IEP team met in January 2024, to review the Student's current IEP, and to review present levels of performance in OT, PT and communication to make goal recommendations. The IEP team noted that the Student had received a private PT evaluation in December 2023, at the request from the Parents and Bancroft, but the IEP did not include this evaluation. The IEP team further noted that the Student had not received an OT assessment for fine motor skills since August 2022.

69. The IEP team created a January 2024 IEP amendment with a related services matrix which included 260 minutes per month in gross motor skills to be provided by a PT; 300 minutes per month in fine motor skills to be provided by OT staff; and 210 minutes per week in communication skills to be provided by SLP, school personnel, and special education staff. The IEP also outlined supplementary aids and services staff training 2 days per year from Ms. Hill to support the Student's OPT; 30 minutes per week of consultation with Ms. Hill for Bancroft SLP to deliver OPT treatment; two visits home per year for the Student during each IEP period; and six family trips per year to visit the Student.

70. As outlined above, the Student required related services in SLP, OT and PT. The January 2024 IEP amendment provided appropriate amounts of each of these services. The IEP also provided appropriate amounts of supplementary aids and services to support the Student, including SLP training and SLP consultation, Student visits home, and family visits to the Student. Thus, the District included all related services and supplementary aids required by the Student to meet his SLP, OT and PT goals. The District has met its burden on these issues.

71. The January 2024 IEP amendment additionally referenced that the Student received behavioral intervention services provided by BCBAs and ABAs. The IEP amendment also noted that the Student had met his behavior goals and was ready to work toward reintegration. While the Student had an existing November 2023 BIP, the IEP team agreed to wait on current BCBA recommendation for BCBA supervision when considering a less restrictive residential placement. The BCBA thereafter collected quarterly data in March 2024 and a new BIP was created in April 2024. Therefore, the District did not err in not including BCBA related services in the January 2024 IEP amendment. It has met its burden on this issue.

August 2024 IEP Amendment

72. The IEP team next met on August 5, 2024, to address the Student's change in placement to the Bancroft school, and noted that the Student was accessing his school day of instruction and services at Bancroft while residing at Lindens. While not mentioned by the IEP team, as outlined above, Lindens had updated the Student's BIP in April 2024.

73. The IEP team created an August 2024 IEP Amendment, effective August 12, 2024, which included 20 minutes per week in gross motor skills to be provided by a PT; 60 minutes per month in fine motor skills to be provided by OT staff; and 60 minutes per week in communication skills to be provided by an SLP. The August 2024 IEP amendment again outlined supplementary aids and services including 6 hours per day of a dedicated aide monitored by a special education teacher; 30 minutes per week of consultation with Ms. Hill for Bancroft SLP to deliver OPT treatment; 2 days per year of SLP staff training from Ms. Hill; two visits home per year for the Student; and six family trips per year to visit the Student. The IEP amendment also outlined additional supplementary aids and services of 30 minutes of OT consultation per month.

74. The IEP team properly determined that the Student required related services in SLP, OT and PT. The August 2024 IEP amendment provided appropriate amounts of services in each of these areas. The IEP also provided appropriate amounts of supplementary aids and services to support the Student, including SLP training and SLP consultation, Student visits home, and family visits to the Student. Thus, the District included all related services and supplementary aids required by the Student to meet his SLP, OT and PT goals. The District has met its burden on these issues.

75. While the August 2024 IEP amendment does not reference the April 2024 BIP, it does provide that the Student received intensive behavioral interventions from a BCBAs and ABA. Therefore, the District did not err in not including all BCBA and ABA related services in the August 2024 IEP amendment. The District has met its burden on this issue.

October 2024 IEP

76. The IEP team next met on October 4, 2024, to review the current IEP and to address the Student's recent acceptance to NECC and his planned move to that RTC on or around November 18, 2024.

77. The IEP team created an October 2024 IEP for the period of October 4, 2024 through October 3, 2025. The IEP agreed to continue the current goals and services pending his upcoming transition to NECC, and to promote generalization and maintenance to support the Student in preparing for his move. The October 2024 IEP included the same related services in gross motor, fine motor and communication and the same related services in SLP, OT and PT, outlined in the August 2024 IEP Amendment

78. The IEP team properly determined that the Student required related services in SLP, OT and PT. The October 2024 IEP provided appropriate amounts of services in each of these areas. The IEP also provided appropriate amounts of supplementary aids and services to support the Student, including SLP training and SLP consultation, Student visits home, and family visits to the Student. Thus, the District included all related services and supplementary aids required by the Student to meet his SLP, OT and PT goals. The District has met its burden on these issues.

79. While the October 2024 IEP does not reference the April 2024 BIP, it does provide that the Student received intensive behavioral interventions from a BCBAs and ABA. Therefore, the District did not err in not including all BCBA and ABA related services in the October 2024 IEP. The District has met its burden on this issue.

Parent Counseling and Training/Recreation

80. The Parents also argue that the Student's IEPs and IEP Amendments from July 20, 2022 to November 16, 2024, include insufficient related services in Parent Counseling and Training as identified in the Student's most recent reevaluation (January 2022 Reevaluation),²⁵ and insufficient related services in recreation.

81. Although the Parent argues otherwise, the Student's January 2022 Reevaluation did not recommend Parent Counseling and Training as a related service. The January 2022 reevaluation also did not recommend recreation or therapeutic recreation for the Student as a related service. Further, there is no indication in the September 2022 IEP that the Parents requested the services, that the IEP team discussed these services, or that the Student was evaluated for these services. Therefore, the District did not err in not including parent counseling and training, or recreation or therapeutic recreation, as related services in the September 2022 IEP.

²⁵ These specific allegations were outlined in the Parent's Second Amended Complaint, filed December 6, 2024, thus the most recent reevaluation is the January 2022 reevaluation.

82. Similarly, none of the IEPs or IEP amendments created in June 2023, September 2023, December 2023, January 2024, August 2024 or October 2024, included parent counseling or training, or recreation/therapeutic recreation for the Student. However, the need for these services were never evaluated. There was also no discussion regarding the need for these services. Therefore, the District did not err in not including these related services in the Student's IEPs and IEP amendments. It has met its burden on these issues.

Transportation and School Personnel Training

83. Finally, the Parents also argue that the Student's IEPs and IEP Amendments from July 20, 2022 to November 16, 2024, included insufficient services in transportation for home visits prior to his most recent IEP (October 24, 2024 IEP),²⁶ or support for school personnel including appropriate training from qualified providers. The Parents provide no citation to the record for these claims and did not provide any argument in post-hearing briefing.

84. In response, the District argues that the Parents first requested the District fund a home visit for the Student in June 2023, and that the District agreed to the request and funded the Student's home visit. The District further argues that the December 2023 IEP included two home visits for the Student each year, at the Parent's request. The family also acknowledged that the District paid for the Parents to visit Lindens, and for the Student to come home during the summer and Christmas.

85. The record supports that the Parents did not make any request for a home visit until June 2023, and that the District agreed to the requests and added them to the Student's subsequent IEPs. Therefore, the District has met its burden on this issue.

86. The September 2022 IEP did not include providing Bancroft staff with 2 days of SLP training from Ms. Hill each year, although the IEP team agreed in August 2022 that this supplemental service should be included in the Student's final IEP. As such, I find that the District erred in failing to include this in the Student's September 2022 IEP.

87. However, the June 2023 IEP Amendment, and all of the Student's subsequent IEPs and IEP amendments, included this annual training for Lindens staff. There is also no indication that the IEP team recommended any other training, that Lindens staff

²⁶ These specific allegations were outlined in the Parent's Second Amended Complaint, filed December 6, 2024, thus the referenced IEP is the October 2024 IEP.

required any other training, or that the Parents requested any other training. The District met its burden in regard to the Parent's other allegations.

Issue a.iv – The District Failed to Ensure the Student Received All of the Special Education Services Called for in His IEPs and IEP Amendments Between July 20, 2022 and the Student's Admission to NECC on November 16, 2024

88. In their complaint, the Parents allege that the District failed to ensure that the Student received all of the special education services called for in his IEP and IEP amendments from July 20, 2022 to the present.²⁷ In post-hearing briefing, the Parents allege that it is “undisputed” that both Bancroft and Ms. Hill were unable to provide all the SLP services called for in the Student's IEPs. PB11.

89. The Parents assert that because no District staff member ever visited Lindens or Bancroft, or supervised the provision of special education services, and instead relied solely on progress reports, there is no evidence that the Student received his IEP services. PB12-13. The Parents also assert that the District acknowledged that between January 1, 2024 and November 2024, Bancroft was unable to provide all the special education services outlined in the Student's IEPs. PB13-14.

90. In response, the District argues that while it may be unable to account for each minute of services that were provided, the evidence supports a finding that the services in the Student's IEP were materially implemented by Bancroft. DB29. The District argues that the Lindens' progress reports, and other progress information provided by Lindens included in his IEPs, reflect significant progress on the Student's IEP goals since July 2022. *Id.*

91. In this case, I conclude that the District has failed to meet its burden that it materially implemented the Student's IEPs between July 20, 2022 and November 2024.

92. When a student is eligible for special education services and a school district places the Student with a nonpublic agency for special education and related services, the school district must:

²⁷ In briefing submitted after hearing, the Parents argue that the District failed to provide the Student with all of his special education services from September 18, 2021 until the Student moved to NECC. PB25. As this date range was not identified in the Parents' complaint, the undersigned ALJ will focus on the period of July 20, 2022 to when the Student moved to NECC on November 16, 2024.

(1) . . . develop a written contract which must include but not be limited to the following elements:

. . . .

(c) The location(s) and setting(s) of the services to be provided;

(d) A description of services provided, program administration and supervision, including access to state learning standards;

. . . .

(g) a description of the district responsibility and process of data collection and reporting for the student(s), including the data required under IDEA . . .

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency under WAC 392-172A-04080(1) or with another private or public agency under WAC 392-172A-04080(2) is provided special education and related services:

(a) In conformance with an IEP developed by the school district that meets the requirements of [WAC 392-172A]; and

(b) At no cost to the parents.

(3) Each school district remains responsible for ensuring that the student is provided with FAPE.

. . . .

(5) The student retains all of the rights of a student eligible for special education services who is served within the school district.

WAC 392-172A-04085.

93. A school district's obligation to provide the special education and related services provided in a student's IEP does not require "perfect adherence to the IEP . . ." *Van Dyun v. Baker Sch. Dist.* 5J, 481 F.3d 770, 779 (9th Cir. 2007). Failure to implement an IEP constitutes a denial of FAPE only "when the services provided to a disabled child fall significantly short of those required by the IEP," so as to constitute

a material failure. *Id.* at 773. Minor discrepancies between the services provided and the services called for by the IEP do not give rise to an IDEA violation. *Id.* at 880.

94. The District relies heavily on the information contained in Lindens progress reports to argue that the Student received the special education services outlined in his IEPs. The District specifically references Lindens' progress reports,²⁸ and information provided by Lindens regarding the Student's present levels of performance in his IEPs.²⁹ DB29. However, the Parents objected to admission of the Lindens progress reports on the basis that the individuals who created the documents did not testify at hearing.³⁰

95. The evidence contained in the Lindens progress reports constitute hearsay. ER 801. According to RCW 34.05.452(1), parties in an adjudicative proceeding may offer for admission documents and testimony that constitute "hearsay" statements:

Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their own affairs . . .

96. Even though hearsay documentation and testimonial evidence is admissible, the hearsay evidence alone may not support a finding of fact. *Carroll v. Knickerbocker Ice Co.*, 218 NY 435, 113 NE 507 (1916). "Mere uncorroborated hearsay does not constitute substantial evidence." *Consolidated Edison v. NLRB*, 305 U.S. 197, 230, 59 S.Ct. 206 (1938), distinguished by *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420 (1971).

97. In Washington, this concept is codified in RCW 34.05.461(4):

... Findings shall be based on the kind of evidence on which reasonably prudent persons are accustomed to rely on the conduct of their affairs. Findings may be based on such evidence even if it would be inadmissible in a civil trial. However, the presiding officer shall not base a finding exclusively on such inadmissible evidence unless the presiding

²⁸ The District references D42 (District IEP Goal Progress Reports); D43 (Lindens Quarter Progress Reports); D44 (Lindens Quarterly Progress Reports); D45 (Lindens ST Progress Reports); D48 (Lindens Behavior Report); and D50 (Lindens ST Progress Reports).

²⁹ The District references D19 (draft IEP, August 2022); D22 (August 2022 IEP); and D28 (September 2023 IEP).

³⁰ Exhibits D43, D45, D48, and D50 were admitted over the Parents' objections.

officer determines that doing so would not unduly abridge the party's opportunity to confront witnesses and respond to the evidence.

(Emphasis added).

98. The distinction between admitting evidence and relying on hearsay evidence when making a finding of fact is important because RCW 34.05.461 requires that a final order include “a statement of findings and conclusions, and the reasons and basis therefore, on all material issues of fact, law, or discretion presented on the record, including the remedy or sanction” (Emphasis added).

99. The material issues of fact here are whether the Student’s IEPs were materially implemented, and whether the Student received special education services outlined in the IEPs, between July 20, 2022, until the Student moved to NECC on November 16, 2024.

100. The Lindens progress reports were admitted into the record because they are the kind of evidence on which reasonably prudent persons rely when assessing a Student’s progress toward IEP goals. However, the progress reports did not outline any schedule or frequency of when special education services were provided to the Student as outlined in his IEPs between July 20, 2022 and until the Student moved to NECC on November 16, 2024. The District also did not call a single witness from Lindens or Bancroft to testify regarding the specific special education services they allege were provided to the Student.

101. Further, beginning March 2023, Lindens’ progress reports contained minimal information about the Student’s progress in OT, PT and communication goals. In January 2024, the IEP team acknowledged that Lindens was unable to provide the Student with all of the communication, PT and OT services outlined in the January 2024 IEP Amendment. The District also acknowledged at hearing that the Student never received the entirety of his communication, OT and PT services from January 16, 2024, until he left for NECC on November 16, 2024.

102. Only Ms. Hill, the contracted SLP, testified at hearing. Ms. Hill regularly met remotely with the Student for OPT sessions while he was at Lindens and Bancroft, although her session notes reflect that he missed five of twelve sessions in March 2023; two of seven sessions in August 2023; two of four scheduled sessions in November 2023; nine of twenty-two sessions between January 2024 and March 2024; and two of eight sessions in April 2024. Ms. Hill noted that the Student significantly regressed in his speech and communication skills while at Lindens

103. Without any corroborating testimony, the Lindens progress reports alone cannot support a conclusion that the Student received all of the special education services outlined in his IEPs between July 20, 2022, until the Student moved to NECC on November 16, 2024. I conclude that the District has not met its burden on this issue. Therefore, the District failed to materially implement the Student's IEPs during this period of time and denied the Student FAPE.

Issue a.vi– The District Failed to Have the Student in an Appropriate Educational Placement Between July 1, 2023 and November 16, 2024

104. In their complaint, the Parents alleged that since July 1, 2023, the District failed to have the Student in an educational placement that was able to meet his unique needs in his least restrictive setting. In post-hearing briefing, the Parents generally argue that the District failed to provide an “appropriate educational placement” for the Student as of July 1, 2023, without reference to the record for this specific date. PB25. The Parents also generally argue the District conceded that the Student was not receiving all of his special education services as of January 1, 2024, but again do not explain the importance or relevance of the date of July 1, 2023. PB13.

105. In response, the District argues there is no evidence that the Lindens program or Bancroft school were unable to implement the services in the Student's IEP and meet his unique needs in his least restrictive setting between July 1, 2023 and his placement at NECC on November 16, 2024. DB30-31.

106. The undersigned has examined the record and was unable to find a specific event, IEP or District decision which correlates with the July 1, 2023 date referenced by the Parents. The June 2023 IEP Amendment was effective on June 7, 2023, not July 1, 2023.

107. Nevertheless, as outlined above, I conclude that the District failed to meet its burden of proof to show that it materially implemented the Student's IEPs between July 20, 2022, until the Student moved to NECC on November 16, 2024. Therefore, the District denied the Student FAPE.

Issue a.v– The District Did not Deny the Student a FAPE by Not Ensuring the Student Received All SDI from a Special Education Teacher from March 11, 2024 to the Present

108. In their complaint, the Parents alleged that the District denied the Student FAPE from March 11, 2024, by not ensuring that the Student received all of the specially designed instruction from a special education teacher called for in his IEP. In post-

hearing briefing, the Parents do not specifically address this issue, instead generally arguing that the District failed to ensure the Student received all the special education services called for in his IEPs and IEP amendments. PB25.

109. In response, the District argues that the Student's IEPs provided that SDI would be delivered by special education staff and personnel. DB29-30.

110. WAC 392-172A-02090(1)(i) provides:

Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff (or early childhood special education certificated staff, deaf education certificated staff, deaf education with American sign language proficiency certificated staff, teacher of the visually impaired certificated staff), or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate.

111. As outlined above, all of the Student's IEPs from March 11, 2024 to his enrollment at NECC on November 16, 2024, specified that the Student's SDI would be delivered by either special education staff or school personnel, monitored by a special education teacher. School personnel can deliver special education services if supervised by special education staff or special education teachers. WAC 392-172A-02090(1)(i). The District was not required to ensure all the Student's SDI was delivered directly by a special education teacher. The District has met its burden on this claim.

Allegations of Procedural Violations of IDEA

112. In their due process hearing request, the Parents raise numerous claims that the District failed to comply with the procedural requirements of the IDEA. In post-hearing briefing, the Parents generally argue that the District cannot meet burden of proof that it only engaged in harmless procedural errors. PB20-21. They provide little additional argument or citation to the record to support their specific claims. PB7-9.

113. Procedural violations of the IDEA amount to a denial of FAPE and warrant a remedy only if they impeded the child's right to a free appropriate public education; significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents'

child; or caused a deprivation of educational benefits. USC §1415(f)(3)(E)(ii); see WAC 392-172A-05105(2); 34 CFR §300.513(a)(2).

114. As stated by the court in *W.G. v. Bd. of Trustees of Target Range School Dist.*:

Procedural flaws do not automatically require a finding of a denial of a FAPE. However, procedural inadequacies that result in the loss of educational opportunity, *Burke County Bd. of Educ. v. Denton*, 895 F.2d 973, 982 (4th Cir. 1990), or seriously infringe the parents' opportunity to participate in the IEP formulation process, *Roland M.*, 910 F.2d at 994; *Hall*, 774 F.2d at 635, clearly result in the denial of a FAPE.

W.G. v. Bd. of Trustees of Target Range School Dist., 960 F.2d 1479, 8 IDELR 1019 (9th Cir. 1992).

115. A loss of an educational opportunity occurs, for example, when there is a "strong likelihood" that, but for the procedural error, an alternative placement "would have been better considered." *Timothy O.*, 822 F.3d at 1124 (cleaned up). To succeed on a claim of FAPE denial due to a procedural error, a Parent need not definitively show that the child's educational placement would have been different without the error. *Id.*

Issue a.vii - The District Allowed Meaningful Parental Participation in the Student's Educational Placement Between January 1, 2024 and November 16, 2024

116. In their complaint, the Parents alleged that since July 1, 2023, the District failed to allow for meaningful parental participation in the process of seeking a new residential educational facility for the Student which was able to meet his unique needs in his least restrictive setting. In post-hearing briefing, the Parents argue that the District failed to allow meaningful parental participation in the process of seeking a new residential facility from January 1, 2024 through November 16, 2024. PB25. The Parents provide no further argument supporting their allegations. See, *PB*.

117. In response, the District argues the record reflects that the Parents meaningfully participated in the initial process of identifying an appropriate RTC both after the January 2022 IEP team's recommendations, and also in preparation for the Student's discharge from Bancroft in November 2024. DB 32. Citing *Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984), the District argues that it is ultimately responsible for providing a student with a disability with an education it considers appropriate, even if the educational program is different from a program sought by the parents. *Id.*

118. The IDEA requires that parents have the opportunity to participate in meetings with respect to the educational placement of their child. WAC 392-172A-03100; WAC 392-172A-03115; 34 CFR §300.322. To comply with this requirement, parents must not only be invited to attend IEP meetings but must also have the opportunity for “meaningful participation in the formulation of IEPs.” *H.B. v. Las Virgenes Unified Sch. Dist.*, 239 Fed Appx. 342, 48 IDELR 31 (9th Cir. 2007).

119. On the importance of parental participation in developing a child’s IEP and placement, the Ninth Circuit has stated:

Among the most important procedural safeguards are those that protect the parents’ right to be involved in the development of their child’s educational plan. Parents not only represent the best interests of their child in the IEP development process, they also provide information about the child critical to developing a comprehensive IEP and which only they are in a position to know.

Amanda J. v. Clark County Sch. Dist., 267 F.3d 877, 882 (9th Cir. 2001).

120. “A school district violates IDEA procedures if it independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification.” *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003) (citing *W.G. v. Board of Trustees of Target Range School Dist. No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992)). However, districts have no obligation to grant parents a veto right over any individual provision in an IEP. *Ms. S.*, 337 F.3d at 1131. Applying this principle, the court in *Ms. S* concluded that where the district properly involved the Parent in the IEP process, the district’s refusal of a placement entirely in a general education classroom reflected a “difference of educational philosophy,” not a “denial of opportunity to participate.” *Ms. S.* at 1133 (9th Cir. 2003).

121. In this case, the record reflects that between January 1, 2024 through November 16, 2024, the dates outlined by the Parents in briefing, the District allowed meaningful parental participation in the IEP process and the Student’s placement.

122. The IEP team met on December 6, 2023, to review the IEP and BIP. Attendees included the Parents. The IEP team did not change any of the Student’s IEP goals, but instead amended to add two Student visits home per year, and decrease family visits to the residential placement to six per year. The December 2023 IEP Amendment noted that the IEP team agreed that the Student was progressing in his goals at Lindens, and that the team was “beginning to look at his next placement.” There is no

indication that the Parents disagreed this determination, or that they requested a different placement for the Student during the IEP meeting.

123. On December 14, 2023, the District sent the Parents an invitation to attend an IEP team meeting on January 16, 2024, to review the Student's current IEP, and to review present levels of performance in OT, PT and communication to make goal recommendations.

124. That same day, the Parents e-mailed Ms. Wertz asking for a copy of the document she and Ms. Bibby had created in January 2022, and updated in March 2022, for different placement options for the Student. The District also provided the Parents with a copy of the residential research document the District had originally used when first contacting residential placements.

125. On January 4, 2024, for the first time, the Parents e-mailed the District, requesting a new placement other than Lindens or Bancroft. The Parents emphasized Linden's minimal programming, and expressed that additional time at Lindens was limiting the Student's ability to progress. The Parents indicated that they had been in contact with NECC and Shrub Oak International School, but were open to pursuing other schools if the District had researched other options. The Parents further indicated that while NECC had excellent behavior support and programming, the specialists would not work directly with the Student on OT, PT or communication, and that these issues would need to be addressed.

126. The IEP team met as planned on January 16, 2024. Attendees included the Parents as well as District staff and staff from Lindens and Bancroft. The IEP team recognized that the Student would be unable to receive all of his IEP services at Lindens, and that the Student needed an LRE which would give him the opportunity to generalize the skills he had gained. There is no indication that the Parents disagreed with this determination.

127. On April 18, 2024, the Parents informed the District that they had had two interviews with NECC, and that they believed NECC would be a great fit for the Student, although they would have to figure out the speech component. There is no indication that the District was researching other placements for the Student at that time, or participating in discussions with the Parents about other placements.

128. On May 6 and 7, 2024, the Parents visited NECC in person to determine whether it would be an appropriate placement for the Student. The Parents were aware

that NECC would not provide direct SLP services for the Student, but hoped to assess the school to determine if it would be appropriate.

129. On August 5, 2024, the IEP team created an amended IEP for the period of August 12, 2024 through September 12, 2024, to address the Student's change in placement for school services to the Bancroft school. While the Parents attended this meeting, the IEP team again recognized that even after starting at Bancroft, the school would not be able to provide all of the IEP services outlined in the IEP. The Parents did not disagree with this determination.

130. Finally, the IEP team met on October 4, 2024. Meeting attendees included the Parents. The IEP noted that the Student had transitioned to Bancroft in a full day program. The IEP team also noted that the Student had been accepted to NECC and would be moving November 19, 2024. Thus, the IEP team decided not to change any of the Student's existing goals or services, and instead ratified an amended IEP outlining the same goals to address generalization and maintenance to best support the Student in preparing for his move. There is no indication that the Parents disagreed with this decision. The Student thereafter transferred to NECC on November 16, 2024.

131. In sum, the record reflects that on January 16, 2024, August 5, 2024, and October 4, 2024, the Parents participated in the development of IEPs or IEP amendments which addressed the Student's placement. Each of these IEPs identified the Student's placement at either Lindens or Bancroft, and the October 2024 IEP Amendment further noted that the Student would be moving to a new placement on or in November 2024. The Student thereafter discharged to NECC on November 16, 2024.

132. While the Parents disagreed with the Student's continued placement at Lindens or Bancroft between January 1, 2024 and November 16, 2024, there is no indication that the District prohibited them from meaningfully participating in development of the IEPs during this period of time. They attended all meetings, and were involved in the IEP process. Therefore, the District has met its burden on this issue.

Issue b.i –No Evidence that the District Failed to Provide Educational Records When Requested in advance of the Multidisciplinary and IEP Team Meetings

133. The Parents' due process complaint alleges that the District failed to provide educational records when requested in advance of an IEP meeting and in any instance within 45 days, including prior to the January 18, 2022 multidisciplinary and IEP meeting; the February 2, 16, and 25, April 15, July 8, August 16, September 13, and October

11, 2022 IEP team meetings; the February 1, May 30, June 6, and September 12, 2023 IEP team meetings; and after the filing of the initial due process hearing request on September 18, 2023.

134. In response, the District argues that there is no evidence that the Parents requested copies of the Student's education records prior to these meetings. DB33. The District further argues that even if the Parents did not receive these records, there is no evidence that these alleged procedural violations significantly impeded the Parent's opportunity to participate in the decision making process regarding the provision of FAPE to the Student, or cause a deprivation of educational benefit. *Id.*

135. Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained or used by the district. WAC 392-172A-05190. "The school district shall comply with a request promptly and before any meeting regarding an individualized education program or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student." *Id.*

136. A school district must respond within forty-five (45) calendar days. WAC 392-172A-05190. The right to inspect records includes a right to an explanation and interpretation of the records, the right to copies of the records "if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent review the records." *Id.*

137. In briefing, the Parents only identify two specific records: Notices for meetings held on October 15, 2021 and November 5, 2021. PB7.³¹ The Parents argue they did not receive the PWNs for these meetings until September 2023, after filing their due process complaint, and that this inhibited their ability to understand what the District and services providers were doing. *Id.* While neither of these PWNs reference the specific meetings outlined in the Parents' complaint, there is no evidence that these potential procedural violations of the IDEA amounted to a denial of FAPE.

138. Regarding the PWN for the October 15, 2021 IEP meeting, the Parents acknowledge that they attended this meeting and provided input. Ms. Bibby also sent the Parents a PWN for the meeting and created meeting notes. Therefore, the District has met its burden on this claim. Regarding the PWN for the November 5, 2021 IEP

³¹ Parents reference P30 and P31.

meeting, there is no evidence of when this PWN was sent. Even if the Parents did not receive a copy of the PWN after to the meeting, the Parents attended and participated in this meeting. Therefore, any possible procedural violation did not limit their ability to meaningfully participate in their child's education or understand the District's decisions at this meeting.

139. The Parents provide no citation to the record for any other alleged failure of the District to timely provide educational records. As such, I find that the District did not fail to timely provide other educational records to the Parents when requested.

Issues b.ii, b.iii, b.iv – The District Followed IDEA Procedures in the Fall of 2022 When It Conducted a Reevaluation, Completed an FBA, and Created a New IEP

140. The Parent's due process complaint alleges that in the fall of 2021, the District substantially changed the Student's educational placement without conducting a reevaluation, FBA and BIP, or documenting the changes in an IEP amendment. In post-hearing briefing, the Parents generally argue that these do not constitute harmless procedural errors, but do not cite the IDEA procedures which they allege the District violated. PB8-9, 20-21.

141. The District does not dispute that it did not amend the Student's IEP or create a new IEP until January 18, 2022. DB34-35. However, the District argues that it initiated and completed a reevaluation in the fall of 2021 which included an FBA, and documented the change in the Student's schedule following an October 2021 IEP meeting. *Id.*

142. Reevaluations are addressed by WAC 392-172A-03015, which states:

- (1) A school District must ensure that a reevaluation of each student eligible for special education is conducted in accordance with WAC 392-172A-03020 when:
 - (a) the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation; or
 - (b) if the child's parent or teacher requests a reevaluation.

WAC 392-172A-03015(1). A reevaluation cannot occur more than once per year, unless the parent and the school district agree otherwise. WAC 392-172A-03015(2).

143. WAC 392-172A-03015 does not designate a time period during which a District must initiate a reevaluation in response to a parent's request. Nevertheless, a school district must start a reevaluation within a reasonable time after a request. Case law reflects that school districts may properly take weeks, or even months, to start a reevaluation of a student, so long as the delay is reasonable. As an example, *Amanda P. and Casey P. ex rel. T.P. v. Copperas Cove Indep. Sch. Dist.*, 120 LRP 12872, (W.D. Texas 2020), the court concluded that eight months from the date of a parent's request for a dyslexia reevaluation of a transfer student was not unreasonable given the school district's policies, reevaluation requirements, and intervening school breaks. Similarly, in *D.O. v. Excondido Union School District*, 123 LRP 3363 (9th Cir. 2023) the Ninth Circuit concluded that a school district's four-month delay in beginning a reevaluation of a student was justified because the parent did not provide the school district with a copy of a private evaluation despite the district's requests.

144. A school district is also required to complete a reevaluation "(a) within thirty-five school days of receipt of written consent from the Parent." WAC 392-172A-03015(3) (*emphasis added*). However, when a parent imposes conditions on a reevaluation, selectively consents to portions of the evaluation, or increases the scope of an evaluation, the District must make efforts to obtain the parent's full consent before proceeding. See, *G.J. v. Muscogee County School District*, 668 F.3d.1258 (11th Cir. 2021); *Federal Way School District*, 107 LRP 11238 (SEA WA 2007); and *San Juan Bd. of Coop. Ed. Servs.*, 56 IDELR 29 (SEA CO 2010).

145. In the present case, on November 5, 2021, both the District and the Parents agreed that the Student required a reevaluation. On November 18, 2021, the Parents signed a reevaluation consent and added additional assessment areas to be assessed. Dr. Enns began his psychological evaluation on December 4, 2021, and completed his report and FBA in December 2021. The District thereafter completed the reevaluation in January 2022, after additionally conducting a behavior assessment, a functional communication profile, a fine motor assessment, and a gross motor assessment. Based on these facts, I find that the District did not engage in any unreasonable delay in either beginning the reevaluation or completing the reevaluation, nor did they violate any IDEA procedural requirements. Therefore, the District has met its burden on these issues.

146. In the case of a child whose behavior impedes the child's learning or that of others, the IEP team shall consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. 20 U.S.C. § 1414(d)(3)(B)(i); 34 C.F.R. § 300.324(a)(2)(i). An FBA is one type of behavioral intervention or strategy that helps identify causative factors and objectionable behaviors. *J.L. v. Manteca Unified Sch. Dist.*, 2016 U.S. Dist. LEXIS 77441 (E.D. Cal. June 14, 2016); see also *S.J. v. Issaquah Sch. Dist.*, 2007 U.S. Dist. LEXIS 67735 (W.D. Wash. Sept. 12, 2007). WAC 392-172A-01031.

147. As the Ninth Circuit held in *Butte Sch. Dist. No. 1 v. C.S.*, 817 F. App'x 321 (9th Cir. 2020), the IDEA only requires an FBA when a child is removed from his current placement due to problem behaviors. 20 U.S.C. § 1415(k)(1)(D)(ii). Similarly, a BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. WAC 392-172A-01031.

148. In the present case, the Student was removed from his current placement due to behavior problems on December 3, 2021. Dr. Enns began his psychological evaluation on December 4, 2021, and completed both his evaluation and FBA in January 2022. The team did not create a BIP, but instead relied on the FBA when creating the January 2022 IEP. Based on these facts, I find that the District did not violate any IDEA procedural requirements. Therefore, the District has met its burden on this issue.

149. Finally, WAC 392-172A-03110 addresses the development, review and revision of IEPs. This regulation specifies that the IEP must be periodically reviewed, not less than annually, to determine whether the annual goals for the student are being achieved, and to revise the IEP, as appropriate, to address lack of expected progress toward goals, results of reevaluations, information or evaluations provided to or by the parents, the student's anticipated needs, or "other matters." WAC 392-172A-03110(3).

150. WAC 392-172A-03110 further permits the IEP to be amended after annual IEP meetings either by the entire IEP team at an IEP team meeting, or by amending the IEP without a meeting in a written document if the parent and the district agree. WAC 392-172A-03110(2)(c), (d). Parents must be provided a copy of the amended IEP. *Id.*

151. WAC 392-172A-03110 does not designate a specific time period or trigger that requires an IEP review or the IEP amendment. However, initial IEPs must be completed within 30 days after a determination that a student is eligible for special education and related services. WAC 392-172A-03105. See also, WAC 392-172A-03040 (upon the

completion of an evaluation which determines that a student is eligible for special education services, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135).

152. In this case, the record reflects that on October 6, 2021, DBS substantially reduced the Student's special education services to only one to two hours per day due to increasingly aggressive and violent behaviors. The IEP team met a week later, on October 15, 2021, and discussed the change in his services at DBS due to his severe behaviors. The Parents acknowledge that they attended this meeting and provided input. The District also provided the Parents with a PWN which specified the Student was out of school from October 6, 2021 through October 14, 2021, and that the Student was only attending DBS about an hour. The PWN further noted that the District planned to conduct a PFA starting October 18-20, 2021.

153. The IEP team met again on November 5, 2021, and agreed to conduct a reevaluation of the Student. As outlined above, the District timely completed the reevaluation in January 2022, and completed a new IEP on January 18, 2022. This was within 30 days of the reevaluation, and within three months after DBS substantially reduced the Student's special education services.

154. Based on these facts, I find that the District did not fail to document the Student's changes in educational placement through an IEP amendment, or engaged in any unreasonable delay in creating the January 2022 IEP. Therefore, I conclude that the District did not procedurally violate the IDEA, and has met its burden on this issue.

Issue b.v – The District Provided Prior Written Notices Before Material and Substantial Changes to the Student's Educational Placement between September 18, 2021 and July 20, 2022

155. The Parents' due process complaint alleges that they did not receive any PWNs before material and substantial changes were made to the Student's educational placement from September 18, 2021 to present, specifically when the Student's time at DBS was reduced and DBS stopped providing any services to the Student; when the District ceased OT and PT once the Student was no longer at DBS; when the District reduced SLP services once the Student was no longer at DBS; when the Student was at home receiving no services at all from the District; when the District offered services to the Student at one of its facilities rather than at a residential educational placement in the spring of 2023; when the Student began at Lindens; and then when the Student was moved to the Bancroft School.

156. In post-hearing briefing, the Parents focus only on PWN issued in the fall of 2021: notices for IEP meetings held on October 15, 2021 and November 5, 2021. PB7.³² The Parents do not point to any other portions of the record to support their claims that the did not receive notice of other changes in the Student's educational placement after he left DBS, began school at Lindens, or moved to the Bancroft school. Parents also do not cite the specific IDEA procedures which they allege the District violated. PB21.

157. In response, the District argues PWNs for the October 2021 and November 5, 2021 IEP meeting accurately documented the changes to the Student's shortened schedule and programming. DB35. The District further argues, without citation to the record, that the Parents were informed of the District's proposal of interim programming through communication with District staff, fully aware of when the Student was placed at Lindens and when he transitioned to Lindens. DB38.

158. WAC 392-172A-05010 outlines the requirements for PWNs and specifies, in relevant part:

- (1) Written notice that meets the requirements of subsection (2) of this section must be provided to the parents of a student eligible for special education services, or referred for special education services a reasonable time before the school district:
 - (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or
 - (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.
- (2) The notice required under this section must include:
 - (a) A description of the action proposed or refused by the agency;
 - (b) An explanation of why the agency proposes or refuses to take the action;
 - (c) A description of each evaluation procedure, assessment, record,

³² Parents reference P30 and P31.

or report the agency used as a basis for the proposed or refused action;

- (d) A statement that the parents of a student eligible or referred for special education services have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (e) Sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice;
- (f) A description of other options that the IEP team considered and the reasons why those options were rejected; and
- (g) A description of other factors that are relevant to the agency's proposal or refusal.

159. The record reflects that between October 6, 2021 and December 3, 2021, DBS substantially reduced the Student's services to only one to two hours per day due to increasingly aggressive and violent behaviors. As outlined above, the District documented the change in the Student's schedule in an October 15, 2021 PWN, and again documented the District decision to reevaluate the Student in a November 5, 2021 PWN.

160. This documentation did not occur before the reduction in services were initiated by DBS, as required by WAC 392-172A-05010. However, the record further indicates that the Parents participated in the October 15 and November 5, 2021 IEP meetings, were notified of the changes in the Student's special education services due to his increasingly violent behaviors, and agreed with the necessity of a reevaluation. Therefore, any possible procedural violation did not limit their ability to meaningfully participate in their child's education or understand the District's decisions. The District has met its burden on this issue.

161. Parents list other times they allege PWNs should have been issued. However, no evidence or argument has been provided indicating these situations required a PWN be issued because the District was not proposing or refusing to change the Student's educational placement. The evidence does not show the District violated the IDEA or denied the Student FAPE in regards to this issue.

Issue b.vi – There Is No Evidence the District Failed to Provide Prior Written Notices Documenting Denied Requests from Parents Related to FAPE to Student from September 18, 2021 to the Present

162. The Parents’ due process complaint alleges that the District violated IDEA procedural requirements by failing to issue PWNs documenting the reasons the District denied their requests related to the provision of FAPE for the Student from September 18, 2021 to the present.

163. The Parents list over a dozen times when they allege that a request they made to the District was denied and a PWN was not issued. However, in post-hearing briefing, the Parents do not point to anything in the record showing these requests were made to the District. They also fail to explain why any of these request would require the District to issue a PWN. The evidence does not show the District violated the IDEA or denied the Student FAPE in regards to this issue.

Issue b.vii – There Is No Evidence the January 2022 Reevaluation Report Violated IDEA Procedural Requirements

164. The Parents’ due process hearing request alleges that the District violated IDEA procedural requirements by failing to properly complete a reevaluation report that reflected the decisions the multidisciplinary team made in January of 2022, including ensuring that the team’s decisions with respect to qualifying category and recommendations for areas of the provision of special education services were reflected in the reevaluation report and that all reports that were completed as part of the January 2022 reevaluation were included in the same.

165. In post-hearing briefing, the Parents argue that the District never ensured that “all reports” related to the January 2022 reevaluation were included with the reevaluation, and specifically referenced Ms. Hill’s report. PB8. The Parents’ briefing additionally references a request that the District send the Parents a copy of the January 2022 reevaluation which included Ms. Hills’ report, Dr. Enns’ evaluation and Dr. Enns’ FBA as attachments.³³ *Id.* The Parents further argue that that the District failed to update the Student’s eligibility category even though the IEP team agreed to do so. PB8-9. The Parents argue that these failures to comply with IDEA procedure resulted in the Student not receiving all the services the IEP team identified that he needed and those services not being included in the January 2022 IEP. *Id.*

³³ The Parents reference P21, an e-mail dated September 12, 2023.

166. In response, the District argues that the January 2022 reevaluation report complied with the procedural requirements of WAC 392-172A-03035.

167. WAC 392-172A-03035 outlines the requirement of an IEP evaluation report, and provides, in relevant part:

(1) The evaluation report shall be sufficient in scope for the IEP team to develop an IEP, and at a minimum, must include:

(a) A statement of whether the student has a disability that meets the eligibility criteria in this chapter;

(b) A discussion of the assessments and review of data that supports the conclusion regarding eligibility including additional information required under WAC 392-172A-03080 for students with specific learning disabilities;

(c) How the student's disability affects the student's involvement and progress in the general education curriculum or for preschool children, in appropriate activities;

(d) The recommended special education services, and any related services the evaluation group determines the student needs in order to benefit from special education services;

(e) Other information, as determined through the evaluation process and parental input, needed to develop an IEP;

(f) The date and signature of each professional member of the group certifying that the evaluation report represents his or her conclusion. If the evaluation report does not reflect his or her conclusion, the professional member of the group must include a separate statement representing his or her conclusions.

(2) Individuals contributing to the report must document the results of their individual assessments or observations.

168. Here, the facts illustrate that the IEP team met on January 18, 2022, to discuss the reevaluation, discuss placement of the Student in a residential program and establish a new IEP. Attendees included the Parents, Dr. Enns, and Ms. Hill, as well as

the District PT, District OT, District Special Education Director, and former District Assistant Director of Special Education.

169. The January 2022 reevaluation contained Ms. Eakle's January 10, 2022 Behavior Assessment, Ms. Sias' January 10, 2022 Functional Communication Profile, Ms. Brewer's January 17, 2022 Fine Motor Assessment, and Ms. Sherer's gross motor assessment. The IEP reevaluation referenced Dr. Enns' December 2021 Psychological Assessment for background information, Student observations, and cognitive assessments. The reevaluation further specified that "[a] separate articulation assessment is being completed by Renee Hill, M.A. CCC-SLP as part of this evaluation."

170. The January 2022 reevaluation noted that the Student continued to meet the disability category of Health Impairments. The reevaluation included discussion of the assessments and review of data that supported the conclusion regarding eligibility. The reevaluation recommended SDI in the areas of cognitive, behavior, social/emotional, and adaptive/self-help; related services in fine motor, gross motor, and communication; and BCBA supplementary aids and services. The IEP reevaluation noted that due to the Student's current unpredictable nature, and the recommendation that he required multiple people capable of providing safety care and physical restraints, the school setting would not be able to create an environment that met his needs and address safety concerns. Finally, the reevaluation proposed that the Student be placed in an RTC to meet his behavioral needs, and noted that DBS was not sufficiently staffed to support the Student.

171. Ms. Hill signed the Evaluation Summary on January 18, 2022, while Dr. Enns signed it via Zoom that same day. The Parents signed the Evaluation Summary on February 2, 2022, along with Ms. Bibby, Ms. Sias, Ms. Craig, and Ms. Eakle. Other IEP team members signed via Zoom on February 2, 2022, including Ms. Sherer, a general education teacher, and a school psychologist. No dissenting opinions were included. While Ms. Hill's evaluation was completed sometime after the January 18, 2022 reevaluation meeting, The District case manager, Ms. Craig, later attached Ms. Hill's report, along with Dr. Enns' January 2022 Psychological evaluation and FBA, to the January 2022 reevaluation.

172. The District agrees that the January 2022 IEP team agreed to change the Student's category from "Health Impairments" to "Multiple Disabilities," but that none of the Student's subsequent IEPs reflected this change. This does not violate WAC 392-172A-03035(1)(a) or (b), which requires only that the evaluation state whether a student meets eligibility criteria and discuss of how the assessments support the conclusion regarding eligibility. However, there is no indication that the District's failure

to change the Student's eligibility criteria resulted in the Student not receiving all the services the IEP team identified that he needed and those services not being included in the January 2022 IEP.

173. Based on these facts, I conclude that the January 2022 reevaluation met the procedural requirements outlined in WAC 392-172A-03035(1) and (2). WAC 392-172A-01035(1)(b). The District has met its burden on this issue.

Issue b.viii – The District Included the Parents in the FBA Process and BIP Development Since July 20, 2022

174. The Parents' due process hearing request alleges that the District violated IDEA procedural requirements when it failed to include the Parents in the process of drafting new FBAs and BIPs since the Student has been at Bancroft.

175. In post-hearing briefing, without citation to the record or any provisions of the IDEA, the Parents generally argue that the District did not include them in the process of drafting new FBAs and BIPs while the Student was at Bancroft. PB21. In response, the District argues that the Parents attended every evaluation and IEP team meeting when FBAs and BIPs were discussed and reviewed, and attended quarterly meetings with Bancroft where they discussed the Student's BIPs and behavior data that had been collected. DB37.

176. WAC 392-172A-01031 outlines the specific requirements IEP teams must include in a BIP, but contains no specific procedural rules related to how parents are involved in the BIP process. Chapter 392-172A WAC also does not contain procedural rules related to how parents are involved in the FBA process. Rather, the IDEA generally requires that parents have the opportunity to participate in meetings with respect to the educational placement of their child. WAC 392-172A-03100. This includes providing parents with notice of each IEP team meeting; ensuring the notice includes the purpose, time and location of the meeting and the participation of other individuals who have knowledge of the student; and using other methods for participation including video or telephone conference calls. WAC 392-172A-03100(1), (3), (5)

177. In this case, the record reflects the Parents were appropriately notified of, and participated in meetings, regarding the development of BIPs and behavioral interventions, while their Student was at Lindens and Bancroft between July 20, 2022 and September 16, 2024.

178. On July 20, 2022, the same day as the Student's admission to Lindens, a BCBA at Bancroft developed a draft BIP for the Student. On August 16, 2022, the IEP team

met to create an IEP and BIP to be implemented while the Student resided at Lindens. The Father acknowledged that he this meeting, and that the IEP team discussed both the IEP and the BIP. The IEP team noted that it had attempted an FBA in August 2022, but had been unsuccessful, so had developed a BIP based on hypothesized behaviors. Parents attended this meeting.

179. The IEP team met again on September 13, 2022. The Father acknowledged that he attended this meeting, and that the IEP team discussed both the IEP and the BIP. The IEP team met again in September 2023 to update the IEP and the BIP. The Parents acknowledged that they likely attended this meeting.

180. In November 2023, Bancroft completed an FBA and updated the Student's BIP. The IEP team thereafter met on December 6, 2023, to review the IEP and BIP. The Parents attended this meeting.

181. The IEP team met on October 4, 2024, to review the current IEP and update the BIP. The Parents attended this meeting

182. Based on these facts, I conclude that the Parents were involved in the development of a FBA or BIP while the Student was at Lindens and Bancroft. The District did not violate any IDEA procedures requiring them to involve the Parents in this process. The District has met its burden on this issue.

Issue b.ix – There Is No Evidence the Student's IEP Failed to Reflect All of the Special Education Services he Received from September 18, 2021 to the Present

183. The Parents' due process hearing request alleges that the District violated IDEA procedural requirements when it failed to ensure that the Student's IEP reflects all of the special education services that the Student has received from September 18, 2021 to present, including all of the services that the Student and his Parents have received, to include all of the ABA services that the Student has been provided and all of the Parent Counseling and Training that the Student has received.

184. In post-hearing briefing, the Parents did not identify which IEP or IEPs they claim contain the alleged procedural defect, or whether the alleged procedural defects occurred while the Student was at DBS, Lindens or Bancroft. Instead, the Parents simply reiterate their claims without citation to the record or legal authority. PB21. The evidence does not show that the Student's IEPs failed to include all services received. As such, the District has met its burden on this issue.

Issue c – The District is Not Responsible for the Costs of Student’s Medical Care Not Covered by the Washington State Department of Social and Health Services (DSHS)

185. The Parents next argue that the District is responsible for the costs associated with the Student’s receipt of medical care as part of his receipt of FAPE from July 20, 2023. The Parents argue that the District’s inability to provide an appropriate educational placement for the Student within Washington has resulted in his inability to access medical care through the Washington Department of Health and Social Services (DSHS) while also being ineligible to access medical care through the State of New Jersey.

186. In post-hearing briefing, the Parents do not point to portions of the record supporting this claim. They also provide no argument in support of this claim, and do not cite any law, regulation or case law. The District prevails on this issue.

Remedies

187. When a district violates the IDEA, a tribunal may “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii). Relief is “appropriate” if it furthers the purposes of the IDEA and helps to ensure that a student receives the education to which he was statutorily entitled at the time of the violation. *Ferren C. v. Sch. Dist. of Philadelphia*, 612 F.3d 712, 719 (3d Cir. 2010).

Compensatory Education

188. Compensatory education is a remedy designed “to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.” *Reid v. Dist. of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005), cited with approval in *R.P.*, 631 F.3d at 1125.

189. In *Upper Darby Sch. Dist. v. K.W.*, 123 LRP 22649 (E.D. Pa. 07/27/23), the court awarded an hour-for-hour award of compensatory education where the District failed to implement an appropriate behavioral program and denied an autistic student FAPE for two entire school years. This resulted in 1800 hours of compensatory education. *Upper Darby Sch. Dist.*, 123 LRP 22649.

190. However, “[t]here is no obligation to provide day-for-day compensation for time missed. Appropriate relief is relief designed to ensure that the student is appropriately educated within the meaning of the IDEA.” *Parents of Student W. v. Puyallup Sch. Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994). Flexibility rather than rigidity is called for. *Reid v. Dist. of Columbia*, 401 F.3d at 523-24. Compensatory education is an equitable

remedy, meaning the tribunal must consider the equities existing on both sides of the case. *Id.* at 524.

191. "Compensatory education is an equitable remedy that seeks to make up for 'educational services the child should have received in the first place,' and 'aim[s] to place disabled children in the same position they would have occupied but for the school district's violations of the IDEA.'" *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir 2011)(quoting *Reid v. Dist. of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005)).

192. Therefore, a hearing officer may fashion individualized relief for students seeking compensatory education. As noted by the 9th Circuit in *R.P. v. Prescott*:

Courts have been creative in fashioning the amount and type of compensatory education services to award. See, e.g., *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718-19 (3d Cir. 2010) (court can order school to provide annual IEPs to student who had aged out of a statutory right to a FAPE); *M.S. ex rel. Simchick v. Fairfax Cnty. Sch. Bd.*, 553 F.3d 315, 324-26 (4th Cir. 2009) (court can order that private school tuition be reimbursed); *Park, ex rel. Park v. Anaheim Union High Sch. Dist.*, 464 F.3d 1025, 1034 (9th Cir. 2006) (court can order additional training for a child's teachers).

R.P. v. Prescott, 631 F.3d at 1126.

193. Evidence about a student's circumstances after the period during which the alleged FAPE deprivation occurred can be helpful to calculating the "equitable" award of compensatory education. See *Ferren C. v. Sch. Dist. of Phila.*, 612 F.3d 712, 718 (3d Cir. 2010) (explaining that courts crafting equitable relief pursuant to the IDEA must "consider all relevant factors"). The evidence is useful if it sheds light on the amount of compensatory education required to place the student in the position he or she would have been in but for the deprivation. See *id.* at 717-18 (explaining that "compensatory education serves to 'replace[] educational services the child should have received in the first place'" (quoting *Reid v. District of Columbia*, 401 F.3d 516, 518 (D.C. Cir. 2005))); *Jana K. ex rel. Tim K. v. Annville-Cleona Sch. Dist.*, 39 F. Supp. 3d 584, 608 (M.D. Pa. 2014) (citing *Lester H. v. Gilhool*, 916 F.2d 865, 873 (3d Cir. 1990) and *Ferren C.*, 612 F.3d at 717).

194. In this case, the District's multiple IDEA violations delayed the Student's receipt of appropriate services and SDI for more than two years. When the Student entered

Lindens in July 2022, he had significant limitations in communication, gross motor, fine motor, self-help, adaptive and cognitive skills. The most recent evaluation, conducted by NECC in January 2025, reflects that the Student still has significant limitations in all of these areas. These conclusions in the evaluation are supported by the Parents' observations regarding the Student's regression in fine motor, gross motor and speech abilities.

195. I find it especially concerning that the Student's communication skills significantly regressed after his admission to Lindens in July 20, 2022. This is despite the fact that Dr. Enns' January 2022 psychological evaluation and FBA, and the District's January 2022 assessment, all noted that the Student had Dyspraxia/Dysarthria as well as profound impairments in expressive language, pragmatic/social language and speech. The District also acknowledged that Ms. Hill's 2022 oral motor report recommended supporting and maintaining his communication with oral motor therapy on a rigorous schedule. The record reflects that the Student's multiple communication difficulties directly affected Student's behaviors and how he accessed his educational environment. Despite the recommendations in the January 2022 evaluation, the Student did not receive required communication services outlined in his IEPs while at Lindens.

196. The Parents request an award equal to the exact amount of education services they believe the Student missed between September 1, 2021 and September 14, 2024.³⁴ The Parents calculate their request based on the hourly rate provided by the District. The District did not believe that the Parents inaccurately calculated missed SLP sessions outlined in the estimate.

197. However, the Student is currently enrolled in a residential program which the Parents chose specifically to address his significant limitations in communication, gross motor, fine motor, self-help, adaptive and cognitive skills. Therefore, while I conclude that the Student requires compensatory education, I do not find it equitable to award a day-to-day amount for lost services. *Parents of Student W.*, 31 F.3d at 1497; *Reid*, 401 F.3d at 524. An award of compensatory education should provide the Student with the services he requires to regain and maintain the skills to function in an educational setting, and to place the Student in the same position he would have occupied but for the school district's violations of the IDEA. *R.P.*, 631 F.3d at 1125. Therefore, the award is calculated based on his current needs and skills, and to help him regain skills he lost between October 5, 2021 and November 16, 2024.

³⁴ P68.

198. After examining the record, I award compensatory education in the amount of 800 hours at a rate of up to \$150.00 per hour to be paid by the District. This award represents an average of 8 hours per week of additional educational services which could reasonably be provided during two consecutive school years, including ESY, to assist the student to regain and maintain skills. Parents shall have the discretion to use the compensatory education hours for whatever educational services they believe the Student requires, after consultation with the Student's service providers. The Parents may choose to use the compensatory education funds at any time of the year at NECC, with contracting providers in Massachusetts, while the Student is at home in Washington State, or at any location they prefer. As it is unclear when the Student will regain and maintain skills, the compensatory education funds shall remain banked and must be used within five years from the date of this order.

Triennial Evaluation

199. A reevaluation must be conducted at least every three years unless the parent and the district agree that a reevaluation is unnecessary. WAC 392-172A-03015(2)(b); 34 CFR §300.303(b)(2).

200. In this case, the January 2022 Reevaluation specified that the next triennial reevaluation was due on January 18, 2025, but the Student did not receive a reevaluation on or before that date and the Parents did not sign a waiver agreeing to delay the reevaluation. As of hearing, the District also had not yet issued a PWN related to the scope of the reevaluation, completed a triennial IEP reevaluation, or completed an IEP.

201. Therefore, the District is ordered to complete a comprehensive triennial special education eligibility reevaluation of the Student within 60 days of this order.

IEP and Special Education Services

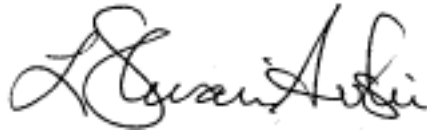
202. After the reevaluation is completed, the IEP team must create an IEP which comports with the requirements of WAC 392-172A-03110.

ORDER

The District violated the Individuals with Disabilities Education Act and denied the Student a free appropriate public education as set forth in Conclusions of Law 21, 23, 29, 43, 55, 59, 65, 67, 86, 91, 103, and 107.

1. The Parents are entitled to the remedies laid out in Conclusions of Law 198, 201, and 202.
2. The Parents' remaining requested remedies are denied.

SERVED on the date of mailing.



L'Nayim Shuman-Austin
Administrative Law Judge
Office of Administrative Hearings

Right To Bring A Civil Action Under The IDEA

Pursuant to 20 U.S.C. 1415(i)(2), any party aggrieved by this final decision may appeal by filing a civil action in a state superior court or federal district court of the United States. The civil action must be brought within ninety days after the ALJ has mailed the final decision to the parties. The civil action must be filed and served upon all parties of record in the manner prescribed by the applicable local state or federal rules of civil procedure. A copy of the civil action must be provided to OSPI, Legal Services, PO Box 47200, Olympia, WA 98504-7200. To request the administrative record, contact OSPI at appeals@k12.wa.us.

DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that true copies of this document were served upon the following as indicated:

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Dated August 13, 2025, at Olympia, Washington.

Lan Le

Representative
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cc: Administrative Resource Services, OSPI